



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 09 फरवरी, 2021/20 माघ, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 17th February, 2020

No: Shram(A) 6-2/2020 (Awards).— In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Judge, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	16/17	Pawan Kumar	Vice Chancellor, HPKVV Palampur	02-12-2019
2.	26/17	Santokh Singh	-do-	02-12-2019
3.	894/16	Ram Singh	E.E. HPPWD, Nurpur	02-12-2019
4.	826/16	Harbans Singh	E.E. HPPWD, Nurpur	02-12-2019
5.	275/15	Mangal Chand	E.E. I&PH/HPPWD Killar	03-12-2019
6.	21/17	Daya Krishan	Vice Chancellor, HPKVV, Palampur	03-12-2019
7.	98/17	Karam Singh	Employer M/S Shykka Co-Op Society	06-12-2019
8.	99/17	Raj Kumar	-do-	06-12-2019
9.	100/17	Rattan Chand	-do-	06-12-2019
10.	97/17	Devi Saran	-do-	06-12-2019
11.	297/15	Ashwani Kumar	Manager, HP Tourism Dev.Corp D.Sala	09-12-2019
12.	29/17	Nek Ram	Vice Chancellor, HPKVV, Palampur	09-12-2019
13.	395/16	Bhan Dei	E.E. HPPWD, Divn.Killar (Pangi)	10-12-2019
14.	434/16	Dharam Dei	-do-	10-12-2019
15.	461/16	Bhag Dei	-do-	10-12-2019
16.	03/16	Guddi	-do-	10-12-2019
17.	435/16	Bin Dei	-do-	10-12-2019
18.	533/16	Prem Lal	-do-	10-12-2019
19.	349/16	Khetar Nath	-do-	10-12-2019
20.	402/16	Ram Singh	-do-	10-12-2019
21.	373/16	Suram Chand	-do-	10-12-2019
22.	561/15	Butii Dei	-do-	10-12-2019
23.	371/16	Kamla	-do-	10-12-2019
24..	299/16	Avtar Singh	-do-	10-12-2019
25.	160/16	Prem Dei	-do-	10-12-2019
26.	151/17	Shakto Ram	D.F.O. Chamba	10-12-2019
27.	56/2000 (RBTNo. 503/04)	Gen.Secretary Manual Employees	Dir. Ayurveda, H.P. & others	11-12-2019
28.	225/15	Soni Kumar	E.E. HPPWD Joginder Nagar	12-12-2019
29.	354/14	Geeta Devi	-do-	12-12-2019
30.	72/18	Daulat Ram	M.D. M/S Horizon Polymers	14-12-2019
31.	605/15	Prem Singh	E.E. HPPWD, Killar	20-12-2019

32.	487/15	Lobhi Ram	-do-	20-12-2019
33.	104/19	Baldev Singh	Employer/G.M.M/S Punj Motors Pvt.Ltd.	20-12-2019
34.	451/16	Parkash Chand	-do-	21-12-2019
35.	538/16	Beli Ram	-do-	21-12-2019

By order,

NISHA SINGH, IAS.

Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 16/2017
Date of Institution : 07.1.2017
Date of Decision : 02.12.2019

Shri Pawan Kumar s/o Shri Mehar Chand, r/o Village Oder, P.O. Bhawarna, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the verbal termination of services of Shri Pawan Kumar Daily Wages s/o Shri Mehar Chand, r/o Village Oder, P.O. Bhawarna, Tehsil Palampur, District Kangra, H.P. by (1) The

Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Plampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01.04.2013 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Vegetable Science and Floriculture department *w.e.f.* the year 2001 and he continued to work as such upto 01.10.2011 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Vegetable Science and Floriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Vegetable Science and Floriculture department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto the year 2011. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the

respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2005 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Vegetable Science and Floriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from the year 2003 upto the year 2010, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the month of October, 2003. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a

labourer. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.6.2019:—

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-04-2013 is/was illegal and unjustified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no *locus standi* to file the present case as alleged? ..*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? ..*OPR.*

6. Whether the petitioner is/was not daily paid labourer of the respondents as alleged? ..*OPR.*

7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue no .1, 2 and 6:

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents in the year 2001 and had continuously worked as such till the year 2011. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2011, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as it was specifically claimed by the respondents that the petitioner had never been engaged as a daily paid labourer on muster roll basis. Rather, he had been raising the bills for the work performed and for which he had been paid at the rate not below the government rate.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514.** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea

of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact has been denied by the respondents by claiming that he had worked on contract basis, for which he had been raising bills and has been paid at the government rates, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral or documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 on record. It is also evident from the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the above, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2001 upto the year 2011, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatt vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 1.4.2013. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No.6 is decided in favour of the respondents.

Issues No. 3, 4 & 7:

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are decided in favour of the respondents.

Issue no. 5:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 26/2017
Date of Institution	: 07.1.2017
Date of Decision	: 02.12.2019

Shri Santokh Singh s/o Shri Krishan, r/o Village and Post Office Malan, Tehsil & District Kangra, H.P. *..Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the verbal termination of services of Shri Santokh Singh s/o Shri Krishan, r/o Village and Post Office Malan, Tehsil and District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Rice & Wheat department *w.e.f.* October, 2002 and he continued to work as such upto 01.9.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Rice & Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice & Wheat department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been

conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2002 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application no. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice & Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had

never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from the year 2003 upto the year 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the year 2003 upto the year 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.6.2019:—

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-09-2010 is/was illegal and unjustified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no *locus standi* to file the present case as alleged? ..*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? .. *OPR.*

6. Whether the petitioner is/was not daily paid labourer of the respondents as alleged? ..*OPR.*

7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 6:

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents *w.e.f.* October, 2002 and had continuously worked as such till the 01.9.2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as it was specifically claimed by the respondents that the petitioner had never been engaged as a daily paid labourer on muster roll basis. Rather, he had been raising the bills for the work performed and for which he had been paid at the rate not below the government rate.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514.** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact has been denied by the respondents by claiming that he had worked on contract basis, for which he had been raising bills and has been paid at the government rates, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral or documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 on record. It is also evident from the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2002 as a daily paid worker. In view of the above, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2002 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 01.9.2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No.6 is decided in favour of the respondents.

Issues No. 3,4 & 7

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a mala fide intention to derive undue advantage(s). These issues are decided in favour of the respondents.

Issue No. 5:

19. Not presse

Relief

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 894/2016
Date of Institution : 24.12.2016
Date of Decision : 02.12.2019

Shri Ram Singh s/o Shri Kirpa Ram, r/o VPO Gurchal, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent(s) : Sh. S.K. Lakha, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Ram Singh s/o Shri Kirpa Ram, r/o V.P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P. during year,1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 21 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 29-11-2012, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the years 1983-84 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990. He has completed 240 days in twelve calendar months before the date of his retrenchment and many junior to him were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no. 3 of the petition. The mates of the petitioner was Shri Karmo and Shri Kalyan Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1983-84 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 7.7.2018:—

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? ..OPP.

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form? ..*OPR*.

4. Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

6. Arguments of the learned Assistant District Attorney for the respondents heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Negative

Issue No.2 : Negative

Issue No.3 : Not pressed

Issue No.4 : Negative

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a beldar in the year 1983-84. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for the evidence of the petitioner for 28.11.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 28.11.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Since, it is disputed by the respondents that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 1990 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

18. Not pressed.

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

21. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 826/2016
Date of Institution	: 24.11.2016
Date of Decision	: 02.12.2019

Shri Harbans Singh s/o Shri Jaisi Ram, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
 For the Respondent(s) : Sh. S.K. Lakha, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Harbans Singh s/o Shri Jaisi Ram, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P. by (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 20 years *vide* demand notice dated nil received in the office of Labour Officer, Kangra at Dharamshala on 13-06-2011 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 20 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis *w.e.f.* 26.6.1986 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990. He has completed 240 days in twelve calendar months before the date of his retrenchment and many junior to him were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. He had worked under various mates. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government

Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from 26.6.1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 7.7.2018:—

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

6. Arguments of the learned Assistant District Attorney for the respondents heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Not pressed
Issue No.4	: Negative
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a beldar in the year 1986. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for the evidence of the petitioner for 28.11.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:-

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:-

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present

before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 28.11.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Since, it is disputed by the respondents that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 1990 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

18. Not pressed.

Issue No. 4:

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief:

21. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**Ref. No. : 275/2015****Date of Institution : 13.7.2015****Date of Decision : 03.12.2019**

Shri Mangal Chand s/o Shri Bhag Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Chetan Viraj Sharma, Adv.

For the Respondent : Sh. B.C. Katoch, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Mangal Chand s/o Shri Bhag Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 13.08.2011 regarding his alleged illegal termination of service during October, 2005 suffers from delay and laches? If not, Whether termination of the services of Shri Mangal Chand s/o Shri Bhag Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily waged worker by the respondent in the month of June, 1995 and had worked as such upto October, 2005. The services of the petitioner had orally been terminated by the respondent *w.e.f.* October, 2005, without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). While terminating the services of the petitioner, no notice or compensation had been paid

to him by the respondent, it being a clear violation of Section 25-F of the Act. The work and conduct of the petitioner was found to be satisfactory by the officials of the respondent/department. He has completed 160 days in each calendar year as prescribed by the State Government for hard area *i.e.* Pangi Killar Division. The petitioner was never charge-sheeted during the period of his service. At the time of his termination, persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Balak Chand, Amar Nath, Shyam Lal, Baldev, Tek Chand, Trilok Chand, Sucheta Ram, Hari Ram, Budhi Ram, Prakash Chand, Chatter Singh, Swarn Singh, Gurucharan Singh, Prem Raj, Lal Chand, Sher Singh, Uttam Chand, Hari Singh, Smt. Guddi Devi. They are still serving the respondent/department. The respondent had not adhered to the principle of 'last come first go'. The provisions of Sections 25-H and 25-N of the Act were also violated by the respondent. Fictional breaks were given to the petitioner from time to time just to frustrate his case of regularization. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1995 and who remained engaged as such till the year 2005. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent. Only those persons junior to the petitioner had been appointed, who had been ordered so by the Labour Court. No other workman junior to the petitioner had ever been retained in service by the respondent. Since the petitioner had left the job of his own there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2005, he certainly would have raised an industrial dispute forthwith, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 06 years, hence the same is bad due to delay and laches. The petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.9.2016:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 13-08-2011 *qua* his termination of service during October, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*

2. Whether termination of the services of petitioner by the respondent during October, 2005 is/was illegal and unjustified as alleged? ..*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Written arguments were filed by the learned counsel for the petitioner. Oral arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent were also heard and the records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Negative

Issue No.2 : Partly Yes

Issue No.3 : Re-engagement with seniority and continuity
in service from October, 2005, except back wages.

Issue No.4 : Negative

Relief : Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1:

9. No doubt, the petitioner was terminated in October, 2005 and the failure report was submitted by the Conciliation Officer on 7.9.2012. In the interregnum, the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was barred and not maintainable. Then, it is evident from the documents placed and exhibited on record by the petitioner as Ex.PW1/D to Ex.PW1/F that he had made representations to the respondent in the years 2007, 2008 and 2009 respectively to re-engage his services. Therefore, it cannot be said that the demand notice was stale. Moreover, the provisions of Limitation Act are not strictly applicable to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which lay upon him. Not only this, it is by now well settled that in case a dispute is referred to this Court for determination, it will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief.

10. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another.* (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

11. In **Divisional Manager, HPFC and another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute.

12. In view of the trite laid down in these rulings, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issues No. 2 and 3:

13. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

14. The petitioner, namely, Shri Mangal Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed documents purportedly in support of his claim, which are Ex. PW1/B to Ex. PW1/G.

In the cross-examination, he denied that he had worked as a daily waged beldar from July, 1996 upto October, 2005. Volunteered that, he had worked in the department from June, 1995. He specifically denied that he had not worked from the year 1995 upto June, 1996. He also denied that he had not fulfilled the criteria of 160 days. He further denied that he had left the work of his own after October, 2005. It is also denied by him that the workers mentioned in para No .6 of his affidavit had not worked regularly and that they all were senior to him. Self stated that, Shri Trilok Chand was junior to him. He admitted that by doing agricultural chores, he earns his livelihood. He denied that from October, 2005 to August, 2011, he had not made any representation anywhere. He denied that he was not removed by the department and that he was making a phoney statement.

15. One Roop Singh (PW2) was also examined by the petitioner in support of his case. He in his chief-examination being the in the shape of Ex. PW2/A has lend due support and corroboration to the case of the petitioner.

In the cross-examination, he denied that the petitioner had never been removed from work by the department. He also denied that the petitioner had never approached the department from the year 2006 upto the year 2010.

16. Ex. PW1/B is the copy of terms and conditions for regularization of daily waged/contingent paid workers who have completed 7 years of continuous service as on 31.3.2014.

17. Ex. PW1/C is the copy of demand notice dated 13.8.2011 relating to the petitioner.

18. Ex. PW1/D to Ex. PW1/F are the copies of representations made by the petitioner to the department.

19. Ex. PW1/G is the information received by the petitioner under the Right to Information Act, 2005 regarding engagement of daily waged workman/beldar working in the department since the year 1997 upto the year 2015 with respect to Killar Division.

20. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Ex.PW1/G has been issued by the department. He denied that the petitioner had been engaged in the year 1995. Volunteered that, he was kept in the year 1996. He clearly admitted that as per Ex.PW1/G Shri Trilok Chand s/o Sh. Prem Lal was junior to the petitioner and that he has been working till date since 1.4.2002. He denied that representations Ex.PW1/D to Ex.PW1/F had been made by the petitioner to the department. However, he admitted that when the same were made, he was not working in the department. He also clearly admitted that S/Shri Balak Chand, Amar Nath, Baldev etc. were also junior to the petitioner. Volunteered that, they were kept as per the orders of the Court. He categorically admitted that the workers mentioned in Ex.PW1/G are junior to the petitioner and they are still working in the department. Self stated that, they were engaged as per the orders of the Court. He admitted that neither any notice has been issued nor any compensation paid to the petitioner. He admitted that during the period of his work, no departmental inquiry had been initiated against the petitioner for absence from duty. He also clearly admitted that as per the record, the petitioner had never been called again for work.

21. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

22. Ex.RW1/C is the copy of mandays chart relating to the co-workers.

23. It is an admitted case of the parties that the services of the petitioner were engaged by the respondent as a daily waged beldar. Though, the petitioner claimed that the initial month of his engagement in the department is June, 1995, but he has not placed and exhibited on the file any document evidencing that he had worked under the respondent since the aforesaid month and year. Looking to the mandays chart, Ex.RW1/B, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in the month of July, 1996 and that he had worked with the respondent/department intermittently upto October, 2005.

24. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

25. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as **Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875** that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

26. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

27. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

28. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2005. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 89 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in a period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon’ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

29. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:—

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

30. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 6 of the statement of claim. Ex.PW1/G i.e. the information furnished to the petitioner by the department regarding the engagement of daily waged beldars w.e.f. the year 1997 to the year 2015, reveals that Shri Trilok Chand, whose name figures at serial no. 6, was appointed by the respondent/department on 1st April, 2002. Ex.PW1/G is not in dispute. Shri B.K. Kapil (RW1) clearly admitted in his substantive evidence that it has been issued by the department. A further perusal of this document also reveals that the services of Shri Sham Lal mentioned at serial No. 3 were engaged on 1.6.1998, that of Shri Sucheta Ram on 1.5.1998, of Shri Hari Ram on 1.10.1997, of Shri Budhi Ram on 1.5.2001, of Shri Prakash Chand on 5.5.1997 and of Shri Sher Singh in the year 1998. Of course, a note has been given on Ex.PW1/G that all

these persons were engaged as per the Court orders but, however, that would not defeat the claim of the petitioner that they all were juniors to him. Admittedly, all the above named persons are still serving the respondent/department. Shri B.K. Kapil (RW1) at one point of his cross-examination was categorical that all the workers mentioned in Ex.PW1/G were junior to the petitioner and that they all were still serving the department. It is apt to mention here that the month of initial appointment of the petitioner as per Ex.RW1/B is July, 1996. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

31. Not only this, Shri B.K. Kapil (RW1) in his cross-examination admitted that Shri Trilok Chand, Shri Balak Chand, Shri Amar Nath and Shri Baldev etc. were juniors to the petitioner.

32. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.**

33. However, the petitioner's allegation that the respondent had violated the provisions of Sections 25-H and 25-N of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act. Also, the allegation of violation of the provisions of Section 25-N of the Act cannot be said to have been established for want of plausible evidence.

34. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

35. The upshot is that in terminating the services of the petitioner, the respondent had violated the provisions of Section 25-G of the Act. In other words, the termination of the services of the petitioner was unlawful. Consequently, the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall also be entitled to seniority and continuity from the date of his illegal termination. However, he is not entitled to back wages, as per my findings above.

36. The issues under discussion are accordingly held partly in favour of the petitioner and against the respondent.

Issue No. 4:

37. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the

reference is not maintainable. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Relief:

38. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination *i.e.* October, 2005, *except back wages*. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 21/2017
Date of Institution	: 07.1.2017
Date of Decision	: 03.12.2019

Shri Daya Krishan s/o Late Shri Roshan Lal, r/o Village Amtrar, P.O. Sunchar, Tehsil Nagrota Bagwan, District Kangra, H.P. *..Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the verbal termination of services of Shri Daya Krishan s/o Late Shri Roshan Lal, r/o Village Amtrar, P.O. Sunehar, Tehsil Nagrota Bagwan, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Seed Production department in the year 2001 and he continued to work as such upto the year 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Seed Production department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishva Vidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2011. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before

the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2005 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker from the year 2001 in the Department of Seed Production, the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was floated by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency.

The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Seed Science and Technology during the year 2001, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.6.2019:—

1. Whether the verbal termination of the services of the petitioner by the respondents during the year, 2010 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*
4. Whether the petitioner has no *locus standi* and cause of action to file the present case as alleged? ..*OPR.*
5. Whether this Court has no jurisdiction to try the present case, as alleged? . . . *OPR.*
6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? ..*OPR.*
7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead

his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 6:

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents in the year 2001 and had continuously worked as such till the year 2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as it was specifically claimed by the respondents that the petitioner had never been engaged as a daily paid labourer on muster roll basis.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514.* it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact has been denied by the respondents, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral or documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 on record. It is also evident from the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the above, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2001 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatt vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on

record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No. 6 is decided in favour of the respondents.

Issues No. 3,4 & 7:

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are decided in favour of the respondents.

Issue No. 5:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No.	: 98/2017
Date of Institution	: 28.3.2017
Date of Decision	: 06.12.2019

Shri Karam Singh s/o Shri Hari Kishan, r/o Village Hillour, P.O. Sahali, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

Employer/Chief Executive Officer, M/S Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Nitin Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Karam Singh s/o Shri Hari Kishan, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during December, 2014 as alleged by the workman by the Employer/Chief Executive Officer, M/s Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Machine Operator in the year 1998 by the respondent. His services were regularized in the year 2002. Thereafter, he had become eligible for the service benefits as per the service rules and labour laws. EPF deductions were made from him by the respondent from the year 2002. However, his services were orally terminated by the respondent in the month of December, 2014 without serving any notice as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). Thereafter, the respondent had been compelling him to give voluntary resignation in writing and that in lieu thereof he would be given a new appointment on contract basis in its sister concern *i.e.* Sai Engineering Foundation. The act of the respondent was illegal and malafide and in the garb of this action it was trying to snatch the seniority and other consequential benefits of regular service to the petitioner. He is ready to join the new assignment, but subject to his seniority being maintained and other consequential benefits being kept intact. Many representations were made by him for his re-engagement, but without success. He is a workman and the respondent is an industry, as per the provisions of the Act. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability, that the petitioner had left the job of his own and that the dispute did not fall within the ambit of the Act. The contents of the petition were denied on merits. It was asserted that the project in which the petitioner was working got damaged and he had been transferred to another place. However, the petitioner had failed to join the duty there and had left the job without any reason. His claim is without any basis and the petition has been filed with an ulterior motive. Since the petitioner had worked on daily waged basis, the question of regularization of his services did not arise. The respondent had complied with all the mandatory provisions of the labour laws as applicable to the workman. EPF accordingly had been deducted and the petitioner was at liberty to withdraw the same. The services of the petitioner had never been terminated by the respondent. He himself had left the job, as he had failed to join his duty after transfer from Hillour MHEP to Kothi MHEP, as Saichu project was

completely damaged and no work was available there. The respondent had never asked the petitioner to resign voluntarily and no assurance had ever been given to him that he would be appointed on contract basis in Sai Engineering Foundation. The petitioner had never approached the respondent. The Shykka Co-operative Labour and Construction Society Limited is not an industry as it is simply providing service to Him Urja, who had constructed the project. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:—

1. Whether termination of the service of petitioner by the respondent during December, 2014 is/was legal and justified as alleged? ..*OPP*.

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : Negative

Issue No.3 : Not pressed

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2014 by violating the

provisions of Section 25-F of the Act. It was asserted that the petitioner had been engaged as a Machine Operator in the year 1998 and that his services had been regularized in the year 2002. It was also his claim that he had worked continuously till the month of December, 2014. It was also asserted that many representations were made by the petitioner for re-engagement, but without success. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a machine operator. However, it was claimed by the respondent that as the petitioner had worked on daily wage basis, the question of regularizing his services did not arise.

12. It was contended by the learned counsel for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in December, 2014. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. It is not the case of the petitioner that after his alleged disengagement persons junior to him were retained and that new/fresh hands had also been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

16. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

17. Not pressed.

Relief:

18. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 99/2017
Date of Institution : 28.3.2017
Date of Decision : 06.12.2019

Shri Raj Kumar s/o Shri Lekh Chand, r/o V.P.O. Purthi, Tehsil Killar, Pangi, District Chamba, H.P. *..Petitioner.*

Versus

Employer/Chief Executive Officer, M/S Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Nitin Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Raj Kumar s/o Shri Lekh Chand, r/o V.P.O. Purthi, Tehsil Killar, Pangi, District Chamba, H.P. during December, 2014 as alleged by the workman by the Employer/Chief Executive Officer, M/S Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of

back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Line Man in the year 1998 by the respondent. His services were regularized in the year 2002. Thereafter, he had become eligible for the service benefits as per the service rules and labour laws. EPF deductions were made from him by the respondent from the year 2002. However, his services were orally terminated by the respondent in the month of December, 2014 without serving any notice as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Thereafter, the respondent had been compelling him to give voluntary resignation in writing and that in lieu thereof he would be given a new appointment on contract basis in its sister concern *i.e.* Sai Engineering Foundation. The act of the respondent was illegal and malafide and in the garb of this action it was trying to snatch the seniority and other consequential benefits of regular service to the petitioner. He is ready to join the new assignment, but subject to his seniority being maintained and other consequential benefits being kept intact. Many representations were made by him for his re-engagement, but without success. He is a workman and the respondent is an industry, as per the provisions of the Act. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability, that the petitioner had left the job of his own and that the dispute did not fall within the ambit of the Act. The contents of the petition were denied on merits. It was asserted that the project in which the petitioner was working got damaged and he had been transferred to another place. However, the petitioner had failed to join the duty there and had left the job without any reason. His claim is without any basis and the petition has been filed with an ulterior motive. Since the petitioner had worked on daily waged basis, the question of regularization of his services did not arise. The respondent had complied with all the mandatory provisions of the labour laws as applicable to the workman. EPF accordingly had been deducted and the petitioner was at liberty to withdraw the same. The services of the petitioner had never been terminated by the respondent. He himself had left the job, as he had failed to join his duty after transfer from Hillour MHEP to Kothi MHEP, as Saichu project was completely damaged and no work was available there. The respondent had never asked the petitioner to resign voluntarily and no assurance had ever been given to him that he would be appointed on contract basis in Sai Engineering Foundation. The petitioner had never approached the respondent. The Shykka Co-operative Labour and Construction Society Limited is not an industry as it is simply providing service to Him Urja, who had constructed the project. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the service of petitioner by the respondent during December, 2014 is/was legal and justified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

5. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*
Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the

orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2014 by violating the provisions of Section 25-F of the Act. It was asserted that the petitioner had been engaged as a Machine Operator in the year 1998 and that his services had been regularized in the year 2002. It was also his claim that he had worked continuously till the month of December, 2014. It was also asserted that many representations were made by the petitioner for re-engagement, but without success. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a machine operator. However, it was claimed by the respondent that as the petitioner had worked on daily wage basis, the question of regularizing his services did not arise.

12. It was contended by the learned counsel for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160

days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in December, 2014. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. It is not the case of the petitioner that after his alleged disengagement persons junior to him were retained and that new/fresh hands had also been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

16. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

17. Not pressed.

Relief:

18. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No.

: 100/2017

Date of Institution**: 28.3.2017****Date of Decision****: 06.12.2019**

Shri Rattan Chand s/o Shri Gurdial, r/o Village Shoon, P.O. Udeen, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

Employer/Chief Executive Officer, M/S Shykka Co-operative Society Limited, H.O.
Chowk Dhanotu, Sunder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Nitin Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Rattan Chand s/o Shri Gurdial, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. during December, 2014 as alleged by the workman by the Employer/Chief Executive Officer, M/s Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Machine Operator in the year 1998 by the respondent. His services were regularized in the year 2002. Thereafter, he had become eligible for the service benefits as per the service rules and labour laws. EPF deductions were made from him by the respondent from the year 2002. However, his services were orally terminated by the respondent in the month of December, 2014 without serving any notice as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). Thereafter, the respondent had been compelling him to give voluntary resignation in writing and that in lieu thereof he would be given a new appointment on contract basis in its sister concern i.e. Sai Engineering Foundation. The act of the respondent was illegal and malafide and in the garb of this action it was trying to snatch the seniority and other consequential benefits of regular service to the petitioner. He is ready to join the new assignment, but subject to his seniority being maintained and other consequential benefits being kept intact. Many representations were made by him for his re-engagement, but without success. He is a workman and the respondent is an industry, as per the provisions of the Act. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability, that the petitioner had left the job of his own and that the

dispute did not fall within the ambit of the Act. The contents of the petition were denied on merits. It was asserted that the project in which the petitioner was working got damaged and he had been transferred to another place. However, the petitioner had failed to join the duty there and had left the job without any reason. His claim is without any basis and the petition has been filed with an ulterior motive. Since the petitioner had worked on daily waged basis, the question of regularization of his services did not arise. The respondent had complied with all the mandatory provisions of the labour laws as applicable to the workman. EPF accordingly had been deducted and the petitioner was at liberty to withdraw the same. The services of the petitioner had never been terminated by the respondent. He himself had left the job, as he had failed to join his duty after transfer from Hillour MHEP to Kothi MHEP, as Saichu project was completely damaged and no work was available there. The respondent had never asked the petitioner to resign voluntarily and no assurance had ever been given to him that he would be appointed on contract basis in Sai Engineering Foundation. The petitioner had never approached the respondent. The Shykka Co-operative Labour and Construction Society Limited is not an industry as it is simply providing service to Him Urja, who had constructed the project. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the service of petitioner by the respondent during December, 2014 is/was legal and justified as alleged? ..*OPP*.

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Negative

Issue No.3 : Not pressed

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2014 by violating the provisions of Section 25-F of the Act. It was asserted that the petitioner had been engaged as a Machine Operator in the year 1998 and that his services had been regularized in the year 2002. It was also his claim that he had worked continuously till the month of December, 2014. It was also asserted that many representations were made by the petitioner for re-engagement, but without success. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a machine operator. However, it was claimed by the respondent that as the petitioner had worked on daily wage basis, the question of regularizing his services did not arise.

12. It was contended by the learned counsel for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in December, 2014. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. It is not the case of the petitioner that after his alleged disengagement persons junior to him were retained and that new/fresh hands had also been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

16. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

17. Not pressed.

Relief:

18. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 97/2017
Date of Institution : 28.3.2017
Date of Decision : 06.12.2019

Shri Devi Saran s/o Shri Ram Lal, r/o Village Chask, P.O. Saichu, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

Employer/Chief Executive Officer, M/S Shykka Co-operative Society Limited, H.O.
Chowk Dhanotu, Sunder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Nitin Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Devi Saran s/o Shri Ram Lal, r/o Village Chask, P.O. Saichu, Tehsil Pangi, District Chamba, H.P. during December, 2014 as alleged by the workman by the Employer/Chief Executive Officer, M/s Shykka Co-operative Society Limited, H.O. Chowk Dhanotu, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Machine Operator in the year 1998 by the respondent. His services were regularized in the year 2002. Thereafter, he had become eligible for the service benefits as per the service rules and labour laws. EPF deductions were made from him by the respondent from the year 2002. However, his services were orally terminated by the respondent in the month of December, 2014 without serving any notice as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). Thereafter, the respondent had been compelling him to give voluntary resignation in writing and that in lieu thereof he would be given a new appointment on contract basis in its sister concern i.e. Sai Engineering Foundation. The act of the respondent was illegal and malafide and in the garb of this action it was trying to snatch the seniority and other consequential benefits of regular service to the petitioner. He is ready to join the new assignment, but subject to his seniority being maintained and other consequential benefits being kept intact. Many representations were made by him for his re-engagement, but without success. He is a workman and the respondent is an industry, as per the provisions of the Act. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability, that the petitioner had left the job of his own and that the dispute did not fall within the ambit of the Act. The contents of the petition were denied on merits. It was asserted that the project in which the petitioner was working got damaged and he had been transferred to another place. However, the petitioner had failed to join the duty there and had left the job without any reason. His claim is without any basis and the petition has been filed with an ulterior motive. Since the petitioner had worked on daily waged basis, the question of regularization of his services did not arise. The respondent had complied with all the mandatory provisions of the labour laws as applicable to the workman. EPF accordingly had been deducted and the petitioner was at liberty to withdraw the same. The services of the petitioner had never been terminated by the respondent. He himself had left the job, as he had failed to join his duty after transfer from Hillour MHEP to Kothi MHEP, as Saichu project was completely damaged and no work was available there. The respondent had never asked the petitioner to resign voluntarily and no assurance had ever been given to him that he would be appointed on contract basis in Sai Engineering Foundation. The petitioner had never approached the respondent. The Shykka Co-operative Labour and Construction Society Limited is not an industry as it is simply providing service to Him Urja, who had constructed the project. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the service of petitioner by the respondent during December, 2014 is/was legal and justified as alleged? ..OPP.

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR*.
Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : Not pressed

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2014 by violating the provisions of Section 25-F of the Act. It was asserted that the petitioner had been engaged as a Machine Operator in the year 1998 and that his services had been regularized in the year 2002. It was also his claim that he had worked continuously till the month of December, 2014. It was also asserted that many representations were made by the petitioner for re-engagement, but without success. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a machine operator. However, it was claimed by the respondent that as the petitioner had worked on daily wage basis, the question of regularizing his services did not arise.

12. It was contended by the learned counsel for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in December, 2014. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. It is not the case of the petitioner that after his alleged disengagement persons junior to him were retained and that new/fresh hands had also been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

16. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

17. Not pressed.

Relief:

18. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 297/2015

Date of Institution : 13.07.2015

Date of decision : 09.12.2019

Shri Ashwani Kumar s/o late Shri Kirpa Ram, r/o Village Narwana, P.O. Yol Camp,
Tehsil Dharamshala, District Kangra, H.P. ..Petitioner.

Versus

The Manager, H.P. Tourism Development Corporation, Dharamshala, Tehsil
Dharamshala, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Dheeraj Lagwal, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Ashwani Kumar s/o Late Shri Kirpa Ram, r/o Village Narwana, P.O. Yol Camp, Tehsil Dharamshala, District Kangra, H.P. *w.e.f.* 06-04-2014 by the Manager, H.P. Tourism Development Corporation Dharamshala, Tehsil Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he had been engaged on daily waged basis as a Carpenter *w.e.f.* 7.7.2012 by the respondent and had continued to work in the said capacity upto 5.4.2014, without any breaks. No appointment letter, attendance cards and wage slips were ever issued to him by the respondent. He was made the payment every month on bill voucher through Punjab National Saving Bank Account No.0136000100294019. The daily rate of carpenter category had been fixed by the State of Himachal Pradesh as Rs.271/- per day on 1.9.2012. However, the respondent had paid less than minimum wages to the petitioner. He thereafter approached the Manager requesting him to pay daily rate of Rs.271/- *w.e.f.* 1.9.2012 and revised daily rates from time to time *w.e.f.* 31.3.2014 along-with difference of arrears, but on demanding minimum wages his services were terminated *w.e.f.* 6.4.2014, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The work and conduct of the petitioner was satisfactory and upto the mark. He had never given any chance for his complaint to his superiors. He had been working under the supervision of Assistant Engineer/Sub-Divisional Officer of Tourism Hotels Corporation Dharamshala. The Assistant Engineer as per his directions had

deputed him to other Tourism hotel of the Corporation from time to time to attend the complaints of carpentry works but his headquarter was fixed at Hotel Dhauladhar, Dharamshala. No show cause notice had been issued to him nor any charge-sheet had been served upon him. No retrenchment notice and compensation thereof had been paid to him under Section 25-F of the Act. He was not given any opportunity of being heard and his termination is against the principle of natural justice. He had worked for more than 240 days *w.e.f.* 7.7.2012 to 5.4.2014. After the termination of his services, the respondent had engaged a carpenter on contract basis for carpentry works. He was not given an opportunity of re-employment. The provisions of Section 25-H of the Act were also violated by the respondent. The action of the respondent in terminating his services was stated to be highly unlawful, arbitrary and in violation of the provisions of the Act. The petitioner is unemployed and not gainfully employed anywhere since the date of his termination. He is entitled to full back wages from the date of his illegal termination *i.e.* 6.4.2014. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for mis-joinder and non-joinder of necessary parties and that the petitioner had not come to the court with clean hands and had suppressed material facts. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged on daily wage basis by the respondent. In compliance to the written directions of the General Manager, Himachal Pradesh Tourism Development Corporation, Shimla, the DGM, Dharamshala had hired the services of the petitioner purely on job basis on lump sum amount of Rs. 4,000/-, as per the volume of work in various hotel units of HPTDC falling under the control of Dharamshala complex. The petitioner had agreed and in writing had given his consent/undertaking on 1.7.2012. The petitioner was not a daily waged worker. He was not entitled to the daily of carpenter fixed by the Government of Himachal Pradesh. He had left the assignment of his own will. Since, the services of the petitioner had been hired on job basis, the question of violation of the provisions of Act did not arise. The work of the petitioner was not found satisfactory and he had been penalized, when was found to be a defaulter for making/misusing the material of table top repairing in the conference hall of HPTDC Hotel Dhauladhar, Dharamshala. The respondent had never discontinued the assignment of the petitioner. He himself had left the job of his own accord without informing his superior officers. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 20.9.2017:—

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 06-04-2014 is/was improper and unjustified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? .. *OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged? ..*OPR.*

5. Whether the petitioner has concealed the material facts from Court as alleged? ..*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties as alleged?
..OPR.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative/counsel for the petitioner and the learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Yes
Issue No.6	: Not pressed
Relief	: Petition is dismissed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ashwani Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he stated that has not annexed any document with the claim petition to show that he had been engaged as a carpenter in the corporation by the respondent. Volunteered that, no such letter was given to him by the corporation. He admitted that in Mark-A there is no mention of his appointment. Self stated that his application was moved as such. He specifically denied that he had never been engaged as a daily wager by the corporation. He also denied that he had done the work on job basis.

11. Ex.PW1/B is the copy of letter regarding complaint against the Manager written by the petitioner to the Labour Officer, Dharamshala.

12. Ex. W1/C is the copy of detail of provident fund relating to the petitioner.
 13. Ex.PW1/D is the copy of receipt dated 3.1.2013 pertaining to the petitioner.
 14. Ex.PW1/E is the copy of pass book relating to the petitioner.
 15. Ex.PW1/F is the copy of letter regarding engagement of Carpenter.
 16. Mark-A is the copy of letter regarding engagement of Carpenter (which corresponds to Ex.PW1/F).
 17. Mark-B is the copy of PF detail relating to the petitioner (which also corresponds to Ex.PW1/C).
 18. Mark-C is the copy of Loose Note dated 24.6.2012 pertaining to the petitioner.
 19. Conversely, Shri Ashni Soni, General Manager of the respondent testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.
- In the cross-examination, he admitted that as per Ex.R-1 the initial appointment of the petitioner had been made by the General Manager for 89 days. Volunteered that, it was on job basis. He admitted that the approval of Ex.R-1 was given by the M.D. of the department. He also admitted that Ex.R-1 bears the signature of the petitioner. He further admitted that as per Ex.R-2 Rs. 4,000/- was being given as lump sum volume of work. Further he admitted that as per Ex.PW1/C, EPF of the petitioner was being deducted, being mandatory. Payment was being made to the petitioner through the bank. He admitted that the petitioner was working on the post of carpenter. He also admitted that the petitioner had worked from July, 2012 till 5.4.2014. Self stated that after 89 days he was being given the breaks. He specifically denied that the petitioner was being paid on daily wage basis. Self stated that he was being paid as per the volume of the work. He admitted that Shri Anil Mahajan, DGM had terminated the services of the petitioner on 6.4.2014. Volunteered that, the petitioner had left the job of his own. He denied that the petitioner had been working under the Assistant Engineer. He also denied that they had removed the petitioner. He further denied that the petitioner had completed 240 days in every year.
20. Ex.RW1/B is the copy of detail of amount paid to the petitioner, carpenter for the work done in various unit in HPTDC Dharamshala Complex *w.e.f.* July, 2012 upto April, 2014.
 21. Ex.R-1 is the copy of letter regarding engagement of Carpenter (which corresponds to Ex.PW1/F).
 22. Ex.R-2 is the copy of letter dated 1.7.2012 written by the petitioner that he is ready to do the job of Carpenter in HPTDC purely on Job Basis period on lump sum amounting to Rs. 4,000/- per month.
 23. Ex.R-3 is the copy of Loose Note relating to the petitioner.
 24. Ex.R-4 to Ex.R-47 are the copies of receipts of payments pertaining to the petitioner.
 25. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof

is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

26. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent. Respondent denied this fact and claimed that the petitioner was never issued any appointment letter by him and that he had worked as a carpenter on job basis. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer- employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent. Rather, from the evidence available on record including the statement of the petitioner (PW1), it can be gathered that the petitioner was never appointed in any capacity at any point of time by the respondent. The petitioner was categorical in his substantive evidence that he has not annexed with the claim petition any document to show that he had been engaged as a carpenter by the respondent in the corporation. He, admittedly, *vide* writing dated 1.7.2012, copy of which is Ex.R-2, had shown his readiness and willingness to do the job of a carpenter in Himachal Pradesh Tourism Development Corporation purely on job basis and on lump sum amount of Rs. 4,000/- per month, as per the volume of work in various units of Dharamshala/Palampur, *w.e.f.* 1.7.2012 onwards. Then, it was itself suggested by the petitioner to Shri Ashni Soni (RW1) that approval of Ex.R-1 had been given to the department by the Managing Director. He admitted the suggestion. Putting of this suggestion and its admission by the respondent leaves no doubt in mind that the petitioner admits the document Ex.R-1. Its perusal reveals that the General Manager, Himachal Pradesh Tourism Development Corporation had asked the Deputy General Manager, HPTDC, Dharamshala Complex, Marketing Office, Dharamshala to get the work of carpenter done on job basis by offering a lump sum amount for the specified job and period. In view of these facts, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that the relationship of employer and employee/workman existed between the parties.

27. Our own Hon'ble High Court in case titled as **Agva Ram vs. State of H.P., 2016 (sup.)Him.L.R. 2821** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and the respondent. No appointment letter issued by the respondent in his favour has been placed on record by the petitioner. Rather, as discussed above, no appointment letter had ever been issued to him by the department. On the contrary, as per Ex.R-2, the petitioner had agreed to work purely on job basis with the department on a lump sum amount of Rs. 4,000/- per month, as per the volume of work *w.e.f.* 1.7.2012. Ex.R-4 to Ex.R-47 show that payments had been made to the petitioner for the work done by him in various units of the corporation at Dharamshala and Palampur. In **Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186**, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by the respondent, so he cannot be said to be an employee of the respondent.

28. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

29. As already mentioned, the petitioner (PW1) in his cross-examination clearly stated that he had not annexed with the petition any document suggestive of the fact that he had been engaged by the respondent in the corporation and that as per Ex.R-2 he had agreed to do the job of carpenter purely on job basis on a lump sum of Rs. 4,000/- per month, as per the volume of work in various units. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

30. These issue are accordingly decided against the petitioner and in favour of the respondent.

Issues No. 3 to 5:

31. Being interlinked and to avoid the repetition, these issues are also taken up together for discussion and disposal.

32. Taking into account my findings on issues No.1 to 3 above, it is held that neither the petitioner has a cause of action, nor he has the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed the material facts. The petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s).

33. These issues are also decided against the petitioner and in favour of his opponent.

Issue No. 6:

34. Not pressed.

Relief:

35. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, leaving the parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 29/2017
Date of Institution : 07.1.2017
Date of Decision : 09.12.2019

Shri Nek Ram s/o Shri Suju Ram, r/o Village Dhakrer, P.O. Punnar, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the verbal termination of services of Shri Nek Ram s/o Shri Suju Ram, r/o Village Dhakrer, P.O. Punner, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Live Stock Farm department in the year 1993 and he continued to work as such upto 01.09.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Live Stock Farm department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever

been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Live Stock Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 1993 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-*cum*-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2005 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Live Stock Farm department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without

complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged on seasonal basis on muster roll from the month of October, 1994 upto January, 1995 only. Thereafter, he had not attended his job of his own sweet will. He was engaged at work by the Principal Investigators of the project. He had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. It was denied that the petitioner was not allowed to enter the premises of the department by the HOD and that his services were unlawfully terminated in the year 2010. Rather, he had left the job of his own after January, 1995. The head of department had not violated any provisions of the Act. He was not a party to Reference No. 207/2010, so the question of terminating his services along-with other co-workers does not arise. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. Since, the petitioner had left the job of his own, the question of marking his attendance by the contractor or anyone else does not arise. The workers had been paid on government approved rates meant for DPLs and as per the provisions of the university the petitioner was not a regular employee. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.6.2019:

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-09-2010 is/was illegal and unjustified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no *locus standi* and cause of action to file the present case as alleged? .. *OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? .. *OPR.*

6. Whether the petitioner is/was daily paid labourer of the respondents as alleged? ..*OPR.*

7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per his statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : Not pressed

Issue No.6 : Yes

Issue No.7 : Yes

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 6:

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents in the year 1994 and had continuously worked as such till 1.9.2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as the same were refuted by the respondents.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Mktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514.** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact had been denied by the respondents, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral nor documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 1994 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatt vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged

termination, which as per the reference took place on 1.9.2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No.6 is decided in favour of the respondents.

Issues No. 3, 4 & 7:

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in favour of the respondents.

Issue No. 5:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 395/2016

Date of Institution : 15.6.2016

Date of Decision : 10.12.2019

Miss Bhan Dei d/o Shri Puran Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Miss. Bhan Dei d/o Shri Puran Chand, r/o Vill. Findpar P.O. Mindhal Tehsil Pangi, District Chamba, H.P. during 09/1999 by the Executive Engineer, H.P.P.W.D. Division Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 02-09-2013 after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 61 and 40 days during years 1998 and 1999 respectively and delay of more than 14 years in raising the industrial dispute, what amount back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked upto the year 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled

to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and she had worked as such till the year 1999. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1999, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2013, *i.e.* after about 14 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during September, 1999 is/was legal and justified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? .. *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Negative

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for

160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 434/2016
Date of Institution	: 19.8.2016
Date of Decision	: 10.12.2019

Smt. Dharam Dei w/o Shri Khem Raj, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Dharam Dei, w/o Shri Khem Raj, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) District Chamba H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 18-7-2013 after lapse of more than 9 years. If not, keeping in view delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked upto the year 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis in the year 1994 and that she had continuously worked with intermittent breaks upto the year 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 25.3.2018:

1. Whether termination of the services of the petitioner by the respondent during year, 2004 is/was improper and unjustified as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : Negative

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition dismissed *vide* operative portion of the

AWARD.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of

Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated.

The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 461/2016
Date of Institution : 20.8.2016
Date of Decision : 10.12.2019

Smt. Bhag Dei w/o Shri Basand Singh, r/o Village Kuthal, P.O. Sach, Tehsil Pangi,
 District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
 For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Bhag Dei w/o Sh. Basand Singh Village Kuthal P.O. Sach Tehsil Pangi Distt. Chamba H.P. from 10/1994 by the Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 14 days during the year 1994 and has raised her industrial dispute *vide* demand notice dated 27-8-2012 after more than 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked upto October, 2005 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the

services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1994. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1994, she certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2012, *i.e.* after about 18 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30.11.2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 27.8.2012 *qua* her termination of service during year 1994 by respondent suffers from the vice of delay and laches as alleged. If so its effect? ..*OPP.*

2. Whether termination of the service of petitioner by the respondent during year 1994 is/was illegal and unjustified as alleged? ..*OPP.*

3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead

her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1:

9. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 and 2:

11. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

12. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2005 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till October, 2005. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was

also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

13. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

14. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

15. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

16. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in October, 1994. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

18. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

19. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

21. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 03/2016
Date of Institution	: 01.01.2016
Date of Decision	: 10.12.2019

Ms. Guddi d/o Shri Sukhdev, r/o VPO Kumar, Tehsil Pangi, District Chamba, H.P.

..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Division Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
 For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Ms. Guddi d/o Shri Sukhdev, r/o V.P.O. Kumar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 26-12-2011 regarding her alleged illegal termination of services during August, 1998 suffers from delay and laches? If not, Whether termination of services of Ms. Guddi d/o Shri Sukhdev, r/o V.P.O. Kumar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during August, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked upto August, 1998 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1998. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No

fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1998, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2011, *i.e.* after about 13 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 26-12-2011 *qua* her termination of service during August, 1998 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

2. Whether termination of the service of petitioner by the respondent during August, 1998 is/was legal and justified as alleged? ..*OPP.*

3. If issue No.1 or issue No.2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : Yes

Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No 1:

9. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 and 2:

11. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

12. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 1998 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till August, 1998. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of ‘last come first go’, as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

13. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

14. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

15. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

16. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in August, 1998. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The principle of “last come first go” is envisaged under Section 25-G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

18. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

19. The petitioner’s allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

21. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 435/2016
Date of Institution : 19.8.2016
Date of Decision : 10.12.2019

Smt. Bin Dei w/o Shri Dev Raj, r/o V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P.

..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of between Smt. Bin Dei, w/o Shri Dev Raj, r/o V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 18-01-2013 after lapse of more than 9 years. If not, keeping in view delay of more than 9 years in raising the industrial dispute, what amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked upto the year 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis in the year 1994 and that she had continuously worked with intermittent breaks upto the year 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the service of the petitioner by the respondent during year, 2004 is/was legal and justified as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ..OPR.

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. The petitioner’s allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 533/2016

Date of Institution : 23.8.2016

Date of Decision**: 10.12.2019**

Shri Prem Lal s/o Shri Bazeer Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Prem Lal s/o Sh. Bazeer Chand Village Kuthal, P.O. Sach Tehsil Pangi Distt. Chamba H.P. during 2004 by the Executive Engineer, HPPWD Division, Killar Tehsil Pangi District Chamba, H.P who had worked as beldar on daily wages basis only for 390 days during the year 1998 to 2004 and has raised his industrial dispute vide demand notice dated 23-10-2012 after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1998 to 2004 and delay of more than **8 years** in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1998. He had worked upto the year 2004 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and he had worked as such till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2012, *i.e.* after about 08 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during year 2004 is/was legal and justified as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1998 and had continuously worked as such till the year 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to his allegation that new workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 349/2016
Date of Institution : 26.5.2016
Date of Decision : 10.12.2019

Shri Khetar Nath s/o Shri Jagdev, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Killar, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Khetar Nath, s/o Shri Jagdev, r/o Vill. Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. during 08/1998 by the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 17, 113 and 54 days during years 1996, 1997 and 1998 respectively and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1994. He had worked upto October, 2005 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and he had worked as such till the year 1998. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1998, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2013, i.e. after about 15 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during August, 1998 is/was legal and justified as alleged?

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the petition is not maintainable in the present form as alleged? ..*OPR*.

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Negative

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2005 by violating the

provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 2005. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in August, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were

junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to his allegation that new workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 402/2016
Date of Institution : 16.6.2016
Date of Decision : 10.12.2019

Shri Ram Singh s/o Shri Puran Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Killar Division (Pangi), Tehsil Pangi,
District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Ram Singh s/o Shri Puran Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P., during year 2000 by the Executive Engineer, H.P.P.W.D./ I.&P.H. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 02-09-2013 after lapse of more than 13 years. If not, keeping in view delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1994. He had worked upto the

year 2000 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis in the year 1994 and that he had continuously worked with intermittent breaks upto the year 2000. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during year 2000 is/was legal and justified as alleged? ..*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR*.

4. Whether the claim petition is bad on account of delay and laches as alleged? . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2000 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 2000. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to his allegation that new workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 373/2016
Date of Institution : 02.6.2016
Date of Decision : 10.12.2019

Shri Suram Chand s/o Shri Bainsu Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Killar, District
Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Suram Chand, s/o Shri Bainsu Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during 08/2004 by the Executive Engineer, H.P.P.W.D. Division Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 26-08-2012 after 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 24, 77 and 28 days during years 1995, 1998 and 2004 respectively and delay of 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1995. He had worked upto August, 2004 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1995 and he had worked as such till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year

2004, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2012, *i.e.* after about 08 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 07.3.2018:

1. Whether termination of the services of the petitioner by the respondent during August, 2004 is/was improper and unjustified as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? .. *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2 : Negative

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 And 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1995 and had continuously worked as such till the year 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in August, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to his allegation that new workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 561/2015
Date of Institution : 04.12.2015
Date of Decision : 10.12.2019

Smt. Butti Devi w/o Shri Sui Ram, d/o Shri Madho Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division H.P.P.W.D. & IPH Division Killar (Pangi), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Butti Devi w/o Shri Sui Ram, d/o Shri Madho Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 05-04-2012 regarding his alleged illegal termination of services during October, 1995 suffers from delay and latches? If not, Whether termination of services of Smt. Butti Devi w/o Shri Sui Ram, d/o Shri Madho Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 1995, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1991. She had worked upto

October, 2005 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Chuni Lal and six others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14, 16 and 21 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1992 and she had worked as such till the year 1995. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1995, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2012, i.e. after about 17 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 20.4.2016:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 05.05.2012 *qua* her termination of service during October, 1995 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*

2. Whether termination of the service of petitioner by the respondent during October, 1995 is/was illegal and unjustified as alleged? ..*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1:

9. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 and 2:

11. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

12. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2005 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1991 and had continuously worked as such till the year 2005. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

13. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

14. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

15. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

16. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2005. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

18. The petitioner in paragraph 10 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Chuni Lal and six others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

19. The petitioner's allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

21. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 371/2016
Date of Institution	: 27.5.2016
Date of Decision	: 10.12.2019

Miss Kamla d/o Shri Mahesh Chand, r/o Village Jhalwas, P.O. Karyas, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Miss. Kamla, d/o Shri Mahesh Chand, r/o Vill. Jhalwas P.O. Karyas Tehsil Pangi, District Chamba, H.P. during 10/1999 by the Executive Engineer, H.P.P.W.D. Division Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated nil received in the Labour Officer on 03-08-2012 after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 89½, 138½, 116, 186½, 198½ and 148½ days during years 1994, 1995, 1996, 1997, 1998 and 1999 respectively and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was engaged as a daily paid beldar by the respondent in the year 1994 and had worked as such upto the year 1999. The respondent had disengaged her services in the year 1999 without any notice, cause and without following the procedure. Pangi is a tribal area which remains snow bound for most of the year *i.e.* from November to May. During this period no work is available. The petitioner had worked for maximum days in the months in which the work is available in the area. She had worked for about six years and her services were required to be retained as per the policy of the Government. However, her services had been disengaged in utter violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), as no mandatory notice had been served upon her. The principle of ‘last come first go’ had also been violated by the respondent, as persons junior to her, namely, S/Sh. Jagdish Chand, Tek Chand and Budhi Ram had been retained. The seniority of the petitioner had been ignored, being violative of Section 25-H of the Act. She belongs to a BPL family and none of the family members is in government or private sector service. So she is entitled to be retained in service on humanitarian grounds. The services of other workers who had also been terminated along-with the petitioner have been regularized by the respondent on the intervention of the Court. They all are still in service. The petitioner had approached the respondent many a times to re-engage her, but without success. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The

contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and she had worked as such till the year 1999. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent. Since the petitioner had left the job of her own accord and as she has not completed 160 days in any calendar year, there was no need to serve any notice upon her. She had also not fulfilled the required criteria for regularization. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were re-engaged as per the orders of the Court. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent has not violated the principle of 'last come first go'. Only those workmen were regularized by the respondent who had fulfilled the norms fixed by the State Government for regularization. If the petitioner had been terminated in the year 1999, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2012, *i.e.* after about 13 years. The petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 05.12.2017:

1. Whether termination of the services of the petitioner by the respondent during Oct., 1999 is/was improper and unjustified as alleged? ..*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? ..*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 1999 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till the year 1999. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In *R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.* it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously

for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 1999. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 6 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Jagdish Chand, Shri Tek Chand and Shri Budhi Ram who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1:

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 299/2016

Date of Institution : 12.05.2016

Date of Decision : 10.12.2019

Shri Avtar Singh s/o Shri Shiv Charan, r/o Village Anch, P.O. Dharwas, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

ORDER

This order is to dispose of an application under 22 (3) read with Section 151 of the Code of Civil Procedure for bringing on record the legal representatives of deceased workman, namely, Shri Avtar Singh.

2. Material facts necessary for the adjudication of this application are that the deceased workman Shri Avtar Singh was engaged as daily waged beldar in the year 1992 by the respondent. He was terminated by the respondent in the month of October, 2002. He issued a demand notice. State government after the receipt of the failure report from the Conciliation Officer, made the following reference to this Court:-

“Whether alleged termination of services of Sh. Avtar Singh s/o Sh. Shiv Charan Village Anch P.O. Dharwas Tehsil Pangi Distt. Chamba, H.P. during 10/2002 by the Executive Engineer, HPPWD Division, Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 1022.5 days from 1992 to 2002 and has raised his industrial dispute vide demand notice dated nil (received in the office of the Labour Officer Chamba on 23-6-2012) after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1992 to 2002 and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer/management?”

3. Before the workman Shri Avtar Singh could appear before this Court and file the statement of claim, he expired on 17.6.2016 (copy of family register annexed). Notices were issued to the legal representatives of the deceased workman.

4. The applicants preferred the present application under Order 22 Rule 3 read with Section 151 of Code of Civil Procedure for bringing on record the legal representatives of deceased workman Shri Avtar Singh. It is averred in the application that Shri Avtar Singh had expired on 17.6.2016 leaving behind the legal representatives as mentioned in para 2 of the application. Summons had been received by them only in the month of September, 2017, when they had come to know about the reference pending adjudication before this Court. After the death of Shri Avtar Singh, the right to sue survives to his legal representatives. In these circumstances, the applicants prayed that the application be allowed and the legal representatives of deceased workman be brought on record as petitioners.

5. The application was contested by the respondent by filing reply inter-alia on the ground that the legal representatives of deceased Shri Avtar Singh were very much aware of the litigation initiated by him (deceased). Since, the reference pertains to the termination of the deceased, no right to sue survives to his legal representatives. The deceased had expired on 17.6.2016 and the application is time barred, as it has been filed in the year 2017. Hence, it is prayed that the application be dismissed.

6. No rejoinder was filed.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 11.12.2018:

1. Whether there are sufficient ground to allow application under Order 22 Rule 3 read with Section 151 CPC as alleged? ..*OPA.*

2. Whether there are sufficient ground to condone delay in filing application under Order 22 Rule 3 CPC, as prayed for? ..*OPR.*

Relief

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the applicants and their evidence stood closed under the

orders of the Court, as despite being afforded ample and last opportunities, they had failed to lead their evidence. Since, no evidence was led on record by the applicants, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

9. Arguments of the learned counsel for the applicants and the learned Deputy District Attorney for the respondent heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2 : Negative

Relief : Application dismissed as per the operative portion of the Order.

REASONS FOR FINDINGS

Issue No. 1 and 2:

11. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

12. The application has been filed by the applicants claiming that the workman Shri Avtar Singh had expired on 17.6.2016 leaving them behind as his legal representatives. After the death of Shri Avtar Singh as the right to sue survives to them, they be brought on record as the petitioners.

13. It is an admitted case of the parties that the workman Shri Avtar Singh had expired on 17.6.2016.

14. It was contended by the learned Deputy District Attorney for the respondent that as the application has been filed beyond the period of limitation and no reasons have been assigned by the applicants for condoning the delay in filing the same, the application deserves to be dismissed. The case of the applicants is that they are the legal representatives of the deceased workman and as the right to sue survives to them, they be brought on record as petitioners in place of the deceased workman. They had only come to know regarding the pendency of the reference in September, 2017, when summons were received.

15. Under Order 22 Rule 3 (1) of the Code of Civil Procedure where the sole petitioner dies and the right to survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased petitioner to be made a party and shall proceed with the reference. Article 120 of the Limitation Act, 1963 provides that under the Code of Civil Procedure, to have the legal representatives of the deceased petitioner made a party, the application ought to be filed within ninety days from the date of death of the petitioner. Order 22, Rule 3 (2) of the Code of Civil Procedure specifically provides that where within the time limited by law no application is made under sub-rule (1) the reference shall abate as far as the deceased petitioner is concerned. Admittedly, the workman Shri Avtar Singh had died on 17.6.2016. Indisputably, the present application for bringing on record his legal representatives was not filed within the

limitation period, as the same was filed on October 5, 2017 and Shri Avtar Singh had died on 17.6.2016. So, it was required of the applicants to plead and prove on record that there were sufficient grounds to condone the delay in filing the application under Order 22 Rule 3 read with Section 151 of the Code Civil Procedure for bringing on record the legal representatives of deceased petitioner Shri Avtar Singh. However, it is not the pleaded case of the applicants that there has been a delay in filing of the application and which delay ought to be condoned as there are sufficient grounds to condone the same. It was merely pleaded that the applicants had only come to know of the pending reference in September, 2017, when they had received the summons. However, such allegation has also remained a mere saying on record as no evidence to this effect has been led by the applicants. In this view of the matter, the delay in filing the application for bringing on record the legal representatives of the deceased petitioner cannot be condoned. Accordingly, the application under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure deserves dismissal and is accordingly dismissed.

16. Both the issues are decided in the negative and against the applicants.

Relief:

17. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present application merits dismissal and is accordingly dismissed, with no order as to costs.

Reference No. 299/2016

18. In view of the application under Order 22, Rule 3 read with Section 151 of the Code of Civil Procedure having been dismissed, the reference stands abated. Even otherwise, it was required to be pleaded and proved on record that the termination of the services of the deceased petitioner in the month of October, 2002 by the respondent was without complying with the provisions of the Industrial Disputes Act, 1947 and, thus, illegal and unjustified. There is neither any pleading nor any evidence to this effect on record on the part of the applicants. So, this reference is also answered in the negative. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 160/2016
Date of Institution	: 17.3.2016
Date of Decision	: 10.12.2019

Smt. Prem Dei d/o Shri Kishan Chand, r/o Village & P.O. Dharwas, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. & IPH Division Pangri at Killar, Tehsil Pangri, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Soham Kaushal, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Prem Dei d/o Sh. Kishan Chand, Village & P.O. Dharwas, Tehsil Pangri, Distt. Chamba, H.P. from 2004 by the Executive Engineer, HPPWD & IPH Division, Pangri at Killar Tehsil Pangri District Chamba, H.P. who had worked as beldar on daily wages basis only for 59 days, 138 days 25 days, 104 days, 69 days, 49 days 60 days, 93 days, and 61 days, during the year 1992, 1994, 1995, 1998, 1999, 2001, 2002, 2003 and 2004 and has raised her industrial dispute *vide* demand notice dated Nil (received on 17.12.2012 in the office of the Labour Officer Chamba on 17-12-2012) after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1992 to 2004 and delay of more 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1996. She had worked upto the year 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are S/Shri Suraj Ram, Chunku Ram, Budhi Ram and Dev Raj. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14, 16 and 21 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a

daily waged beldar in the year 1990 and she had worked as such till the year 1996. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1996, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2012, i.e. after about 16 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30.11.2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during year 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.

2. Whether termination of the services of petitioner by the respondent during year 2004 is/was illegal and unjustified as alleged? ..*OPP*.

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to?

4. Whether the claim petition is not maintainable in the present form as alleged . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1:

9. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 and 2:

11. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

12. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1996 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of ‘last come first go’, as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

13. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

14. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case

of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

15. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

16. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

18. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Suraj Ram and three others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

19. The petitioner’s allegation that the respondent had also violated the provisions of Section 25-H of the Act as well, to my mind, also does not appear to have been substantiated. The statement of claim is non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after her alleged termination. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

21. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 151/2017
Date of Institution : 06.7.2017
Date of Decision : 10.12.2019

Shri Shakto Ram s/o Shri Baldev Raj, r/o Village Fulyada, P.O. Sillagharat, Tehsil Chamba, District Chamba, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Chamba, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Shakto Ram s/o Shri Baldev Raj, r/o Village Fulyada, P.O. Sillagharat, Tehsil Chamba, District Chamba, H.P. during April, 2014 to July, 2015 and finally during Augsut, 2015 by the Divisional Forest Officer, Division Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the year 2014 in Forest Beat Sillaghrat, Forest Division Chamba. He had worked with intermittent breaks uptil the year 2015 with the respondent/department. Fictional breaks were given to him from time to time so that 240 days could not be completed in each calendar year, whereas persons junior to him were made to continuously work on muster rolls. While orally terminating the services of the petitioner, no one month's notice in writing and retrenchment compensation had been paid to him. The respondent had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). After the termination of the services of the petitioner persons junior to him were retained, so the respondent had violated the principle of 'last come first go'. New/fresh hands, namely, S/Shri Jaram Singh @ Jarmo, Ramesh and Tilak Raj were engaged after the termination of the services of the petitioner. No opportunity of re-employment was afforded to the petitioner. The act and conduct of the respondent was illegal and highly unjustified as well as against the mandatory provisions of Sections 25-G and 25-H of the Act. The respondent had also violated the provisions of Articles 14, 16 and 21 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was asserted that the petitioner was not initially engaged as a daily waged beldar, but he was engaged as a seasonal forestry worker in Sillaghrat Beat, Lower Chamba Range *w.e.f.* 4/2014 and he had worked intermittently uptil August, 2015 on muster rolls basis. No fictional breaks had ever been given to him by the respondent/department. No persons junior him were also retained by the respondent. The forest works are seasonal in nature, being subject to availability of funds. The petitioner had not completed 240 days in any calendar year and so he had not fulfilled the conditions of Section 25-B of the Act. He had left the work of his own sweet will. The respondent has not violated the principle of 'last come first go'. The persons, namely S/Shri Jaram Singh and Ramesh had never worked with the respondent, whereas Shri Tilak Raj had only worked for 37 days in the years 2016 and 2017. He at present is not working with the respondent. Neither any juniors were retained nor new/fresh hands had been engaged by the respondent, so there is no violation of Sections 25- G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.11.2016:

1. Whether time to time termination of service of the petitioner by the respondent during April, 2014 to July, 2015 is/was legal and justified as alleged? ..*OPP*.

2. Whether final termination of service of petitioner during August, 2015 is/was legal and justified as alleged? ..*OPP*.

3. If issue no. 1 or issue no. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPP*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Discussed

Issue No.2 : Discussed

Issue No.3 : Negative

Issue No.4 : Not pressed

Relief : Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The version of the petitioner is that from the date/month of his initial engagement to the year 2015, artificial/fictional breaks in service were provided to him by the respondent.

11. While denying the said fact, the respondent has pleaded that the petitioner had been engaged for seasonal forestry works in the month of April, 2014. He used to work intermittently as per his own sweet will and convenience. No intentional breaks in service were provided to him at any point of time.

12. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged or not?

13. No ocular evidence in this regard has been led on record by the petitioner. He also failed to place and exhibit on record his mandays chart to show that artificial/fictional breaks in service were provided to him by the respondent.

14. Further, if intentional breaks in service were provided to the petitioner by the respondent time and again as alleged, then why he did not agitate the said fact earlier or at the time of receipt of payments for the working days actually put in by him. The fact that the petitioner remained tight lipped and complacent about his right for more than two years as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of a regular employee with the malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

15. Now comes the question as to whether in the year 2015 the services of the petitioner were finally terminated by the respondent (as alleged) or not?

16. Though, the petitioner claimed that his services had illegally and unjustifiably been terminated in the month of August, 2015 by the respondent, but in the reply the respondent took the stand that the petitioner had himself abandoned the job. It was also the stand taken by the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act.

17. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellattv vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

18. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged final termination, which as per the reference took place in August, 2015. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in

this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

20. The petitioner in paragraph 7 of the statement of claim maintained that at the time his services were terminated, the workmen, who were junior to him, were retained in service continuously without any breaks by the respondent. This averment has not been established, as no seniority list of daily waged category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

21. It was also claimed by the petitioner that new appointments had been made by the respondent. However, there is no oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

22. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, all these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4:

23. Not pressed.

Relief:

24. In the light of what has been discussed hereinabove while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 56/2000
R.B.T. No.	: 503/2004
Date of Institution	: 30-5-2000
Date of Decision	: 11-12-2019

The General Secretary, Manual Employees' Association of Indian Medicines, Himachal Pradesh, Jogindernagar, District Mandi, H.P. ..Petitioner.

Versus

1. Director Ayurveda, H.P. Shimla.
2. Manager, Ayurvedic Pharmacy, Joginder Nagar, District Mandi, H.P. ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Sh. S.K. Lakha, ADA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the demands raised by the Manual Employees’ Association of Indian Medicines, Himachal Pradesh, Jogindernagar, District Mandi, H.P. with (1) Director Ayurveda, H.P. Shimla and (2) Manager, Ayurvedic Pharmacy, Jogindernagar, District Mandi, H.P. *vide* their demand charter dated 22.6.98 (copy enclosed) are genuine and justified. If yes, which of their demands should be accepted and from which date?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that it is a registered union of workers of Ayurvedic Pharmacy, Joginder Nagar, District Mandi. Its name is Manufacturing Employees Association of Indian Medicines, Himachal Pradesh. It has an elected working committee and Shri Karam Chand is its General Secretary. Earlier the petitioner known by the name of Himachal Pradesh Aushad Nirman Karamchari Sangh, Joginder Nagar, District Mandi had submitted a demand charter on 22.10.1991 before the Labour-cum-Conciliation Officer, Mandi. However, the reference was made to the Labour Court-cum-Industrial Tribunal for determination of the dispute by the appropriate authority. The reference was decided to the effect that the petitioners in that petition were held entitled to special allowance at the rate of 10% subject to maximum of Rs.100/- per month from the respondents. But, despite the rendition of a specific award on 5.8.1994 by the Tribunal, the respondents had illegally deducted the special allowance of Rs.100/- per month from the wages of the workmen of the Ayurvedic Pharmacy, Joginder Nagar during the period they had availed the facilities of medical/earned leave. It was claimed to be arbitrary as well as discriminatory, hence the relief in terms of the award rendered earlier by this Tribunal is asserted against the respondents. Furthermore, the assertions of the relief of promotion, increment on the pattern of the benefits as made available by the Government of Punjab to its employees, payment of bonus in accordance with law, a direction for regularization of Class-IV part-time employees, a direction to the respondents for filling up the vacant posts, declaration of 1st May as a holiday for overtime wages, providing of insurance cover to the employees under the respondents, medical facilities as well as house rent allowance, have been claimed against the respondents. Hence, the petition.

3. On notice, the respondents appeared, they filed a joint reply taking preliminary objections regarding lack of maintainability and that this Court has no jurisdiction to try the petition. The contents of the petition were denied on merits. It was asserted that the demand charter dated 22.10.1991 for the demands of the petitioners, as alleged therein, have already been

heard by this Tribunal and order dated 5.8.1994 has been implemented. Special allowance @ 10% subject to the maximum of Rs.100/- per month is being paid to those workers who are performing the duties on machines, excluding their period of earned leave/commuted leave, as per the letter of the Government of Himachal Pradesh (Annexure R-II). The question of payment of arrears of special allowance @ Rs.100/- per month from May, 1996 with 18% per annum interest does not arise for such period in which the workers had availed the facility of earned leave or commuted leave. The workers who had not performed the duties on the machines during the period of earned leave/commuted leave were not entitled to special allowance, as per the provisions of the rules. All the Class-IV employees of the pharmacy have been granted the revised pay scale and other allowances *w.e.f.* 1st January, 1996 similar to other Class-IV employees of the State, whose pay scales have been revised by the Government of Himachal Pradesh. The question of paying special allowance with the salary of each Class-IV employees is not possible in the absence of a duty report to be given by the machinery incharge of the pharmacy at the end of the month. All the Class-IV employees of the pharmacy have not been declared skill workers by the department. They are doing the work on machines and other related works under the supervision of Ayurvedic Officers and mechanics. The services of Class-IV employees, who have been appointed and posted in the pharmacy are governed by the provisions of Recruitment and Promotion Rules made by the Government of Himachal Pradesh. The government pharmacy is supplying ayurvedic medicines to all the government ayurvedic health centers and ayurvedic hospitals, who are functioning under the department of Ayurveda of Himachal Pradesh, free of costs. The pharmacy does not come within the purview of the Factory Act, so the provisions of bonus to Class-IV employees does not arise. As per the Recruitment and Promotion Rules, the Class-IV employees are not entitled for promotion as Class-III employees. The Class-IV part-time employees working under the respondents cannot be regularized, as they do not fulfill the essential requirements for appointment against the post of regular Class-IV employee. It is denied that the respondents have any authority to fill up the vacant posts. Different types of posts are filled by the government as per the requirement and as per the provisions of Recruitment and Promotion Rules. As the regular Class-IV employees of the pharmacy are governed by the Central Civil Services Rules and are availing the benefits of all the holidays, gazetted as well as local holidays, the question of declaring 'the labour day' as a holiday does not arise. The workmen are being given compensatory leave in lieu of overtime and extra work done by them in the pharmacy and as there is no provision for payment of extra wages for extra work, the same cannot be accorded to them. All the regular Class-IV employees and daily waged/part-time workers have already been enrolled under the yearly Accidental Insurance Scheme. The Himachal Pradesh Government Employees Group Insurance Scheme, 1984 is also applicable to them. Then there is also a dispensary functioning under the pharmacy, which provides immediate first aid to any injured workman. Rent allowance in accordance with the rules is being accorded to the workmen under the respondents. Hence, it is prayed that the petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 26.4.2001:—

1. Whether the demands raised by the petitioner under demand letter dated 22.6.1998 is genuine and justifiable. If so to what further consequence? ..*OPP.*
2. Whether the petition is not maintainable? ..*OPR.*
3. Whether the forum has no jurisdiction in the matter as alleged? ..*OPR.*

4. Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Be it recorded here that earlier the claim petition had partly been allowed by this Tribunal *vide* award dated 11.9.2006, whereby the respondents were directed to make available to the claimants the benefits of bonus under the Payment of Bonus Act, 1965 in accordance with law along-with interest @ 9% per annum from the date of accrual of benefits till realization. The remaining relief(s) claimed by the petitioner in the statement of claim were declined.

8. Against the said award a Civil Writ Petition was preferred by respondent no.1, which was disposed of by the Hon'ble High Court of Himachal Pradesh on 5.7.2019 on the following terms:—

(a) the impugned order dated 11.9.2006, passed by this Tribunal was partly set aside to the extent wherein issues no. 2 and 3 had been decided as not pressed.

(b) the matter was remanded back to this Tribunal with a direction to frame an issue as to whether the claimants were entitled for the relief, prayed for in view of the provisions of Section 32 (iv) and 35 (v) (c) of the Payment of Bonus Act. Issues No. 2 and 3 were ordered to be decided afresh.

(c) Both the parties were to be given adequate opportunity to lead evidence on the said issues.

It is apt to mention here that the findings on issue no.1 rendered by this Tribunal, whereby the remaining relief(s) claimed by the petitioner, except for the relief of bonus, were declined, were not set aside by the Hon'ble High Court in the aforesaid Civil Writ Petition.

9. In compliance of the aforesaid directions passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1852 of 2008 titled as State of H.P. through Pr. Secretary (Ayurveda) to the Government of H.P. & Ors. *versus* Manufacturing Employees Association of Indian Medicines, Himachal Pradesh & another decided on 5.7.2019, the following additional issue was framed for determination and adjudication by this Tribunal *vide* order dated 22.7.2019:—

1(a) Whether the claimants are entitled for the relief, prayed for in view of the provisions of Sections 32 (iv) and 32 (v) (c) of the Payment of Bonus Act, as alleged? .. *OPP*.

Relief.

10. Both the parties were afforded opportunities to lead evidence on the additional issue so framed by this Tribunal. However, when the case was listed for adducing evidence on additional issue by the petitioners for 30.9.2019, neither the petitioner nor its counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. Respondents examined Shri Sunit Pathania, Dy. Director, Ayurveda, Mandi Zone, District Mandi and Shri Neelam Kumar, Ayurvedic Medical Officer (Officiating Manager), Govt. Ayurvedic Pharmacy Joginder Nagar, District Mandi, H.P. on additional issue as RW1 and RW2 respectively and closed their evidence.

12. Arguments of the learned Assistant District Attorney appearing for the respondents heard and records gone through.

13. For the reasons to be recorded hereinafter while discussing issues no. 1(a), 2 and 3 for determination, my findings thereon are as under:—

Issue No.1(a) : No

Issue No.2 : Yes

Issue No.3 : No

Relief : The petition is dismissed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No.1(a):

14. In para 11 of the statement of claim, it was claimed by the petitioner that all the workmen of the Ayurvedic Pharmacy at Joginder Nagar were entitled for bonus *w.e.f.* the year 1979 along-with interest @ 18% per annum, as the medicines prepared in the pharmacy were being sold and the respondent/department had been earning a profit from the same. These averments were refuted by the respondents and it was claimed that the Government Ayurvedic Pharmacy, Joginder Nagar is supplying the ayurvedic medicines to all the government ayurvedic health centers and ayurvedic hospitals functioning under the department of Ayurveda, Himachal Pradesh, free of costs. So, the averments made by the petitioner aforementioned were required to be established on record by it by way of ocular and/or documentary evidence.

15. However, when the case was listed for adducing evidence by the petitioner on this additional issue for 30.9.2019, neither the petitioner nor its counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

16. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court,

Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

17. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

18. Rule 22 reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

19. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

20. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee petitioner is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the petitioner is present, it is unwilling to adduce evidence or argue its case.

21. In the instant case, neither the petitioner nor its counsel had put in appearance before this Tribunal on 30.9.2019. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

22. Since, it is disputed by the respondents that the Ayurvedic Pharmacy at Joginder Nagar had been established for the purposes of profit, so firstly it was required of the petitioner to prove on record that the pharmacy an institution was earning profits by selling medicines and then to establish on record that every employee of the said pharmacy was entitled for the payment of minimum bonus by the respondents. Though, a plea has been taken in the statement of claim by the petitioner that the medicines being prepared in the Ayurvedic Pharmacy at Joginder Nagar were being sold and that the respondents had been earning a profit from the same, but such allegations have remained a mere saying on record, as no evidence in support thereof has been led by the petitioner. At the risk of repetition, the petitioner had not put in appearance before this Tribunal.

23. Conversely, the respondents examined Shri Sunil Pathania (RW1) and Shri Neelam Kumar (RW2) in support of the stand taken by them in their reply. Both these witnesses have stated in unequivocal terms that the Ayurvedic Pharmacy at Joginder Nagar belongs to and is being run by the State Government. It is also their evidence that in this pharmacy ayurvedic medicines are being prepared and which are being supplied to the government ayurvedic hospitals and ayurvedic dispensaries free of costs. These medicines are not being sold in the open market nor any profit is being earned.

24. The aforesaid evidence of the respondents has remained unchallenged on record. Nothing contrary has been proved by the petitioner. Indisputably, the claimants, who have filed the statement of claim through the General Secretary of their association, are employees of the Government Ayurvedic Pharmacy, Joginder Nagar. From the un rebutted evidence led on record

by the respondents, it has to be inferred that the Government Ayurvedic Pharmacy, an institution has been established by the State Government not for the purpose of profit, as the drugs being manufactured therein were being supplied to the government ayurvedic hospitals and dispensaries free of costs and that they were not being sold in the open market.

25. Section 32 (v) (c) of the Payment of Bonus Act, 1965 clearly provides that nothing in this Act shall apply to the employees employed by an institution established not for the purposes of profit. Since, as per the ocular evidence led on record by the respondents, the drugs being manufactured by the Government Ayurvedic Pharmacy, Joginder Nagar were being distributed free of costs to the patients in various government hospitals and dispensaries, therefore, the claimants being its employees are not entitled to any bonus, as the provisions of the aforesaid Act are not applicable on the aforesaid establishment in terms of the provisions of Section 32 (v) (c) of the Act.

26. Even otherwise, Section 32 (iv) of the Act *ibid* provides that the provisions of Act shall not apply to the employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or the State Government. Admittedly, the claimants were serving in the Government Ayurvedic Pharmacy, Joginder Nagar, which indisputably is an establishment owned by the Government of Himachal Pradesh. So also, the provisions of the Act *ibid* are not attracted in this case and the claimants are not entitled to any bonus from the respondents.

27. The upshot is that as the provisions of Payment of Bonus Act, 1965 are not applicable on the Government Ayurvedic Pharmacy, Joginder Nagar in terms of the provisions of Sections 32 (iv) and 32 (v) (c) of the Act, the claimants being its employees are not entitled to any bonus. Hence, this issue is answered in the negative and decided against the petitioner.

Issue No. 2:

28. In view of what has been held under the foregoing issue and in view of the fact that the other relief(s) claimed by the petitioner stand already negated by my learned predecessor-in-office as per the findings on issue no.1 and which findings were not set aside by the Hon'ble High Court of H.P. in Civil Writ Petition No. 1852 of 2008 decided on 5.7.2019, it is held that the claim petition is not maintainable in the present form. The same is *malafide*. This issue is answered in the affirmative and decided in favour of the respondents.

Issue No. 3:

29. No grain of evidence has been led on record by the respondents to prove this issue in the affirmative. Even at the time of arguments, it has not been shown by the learned Assistant District Attorney appearing for the respondents as to how this Tribunal has no jurisdiction to try and decide the present *lis*. Hence, this issue is answered in the negative and decided against the respondents.

Relief:

30. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 225/2015
Date of Institution : 27-5-2015
Date of Decision : 12-12-2019

Shri Soni Kumar s/o Shri Mohan Singh, r/o Village Matha Thana, P.O. Panjalag,
Tehsil Ladbharol, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. S.K. Lakha, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Soni Kumar s/o Shri Mohan Singh, r/o Village Matha Thana, P.O. Panjalag, Tehsil Ladbharol, District Mandi, H.P. during June, 2000 to 31-08-2007 by the Executive Engineer, H.P.P.W.D., (B&R) Division Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent in National Highway Division, Joginder Nagar as a daily rated beldar *w.e.f.* 6.6.2000. Later on the workmen of the Division including the petitioner were absorbed in the newly created HPPWD Division, Joginder Nagar in January, 2004. The respondent had given fictional breaks to the petitioner from time to time from the date of his initial engagement upto 31.8.2007. The muster rolls were issued to the petitioner only for 15 days in a month. Some of the juniors, namely, S/Sh./Smt. Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal were allowed to complete 240 days in each calendar year. Some of them have been regularized by the department. The respondent had only stopped giving him fictional breaks from 1.9.2007. Since then he has completed 240 days in each calendar year and is still working with the respondent/department. The act of the respondent was wrong, illegal and against the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). During the period from 6.6.2000 to 31.8.2007, the petitioner had requested the respondent not to give him fictional breaks, but without success. A demand notice was then raised by him before the Labour department. He, thus, prays that he be given the benefits of seniority for the period of fictional breaks along-with back wages and be regularized with other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in June, 2000. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent's office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto 31.8.2007. Rather, the services of the petitioner were engaged as per the availability of work and funds, on his request from time to time. He had been informed at the time of his engagement that he had been engaged for 10/15/20 days and the office of the respondent was not in a position to provide him work for the whole month. The workmen whose names have been mentioned by the petitioner in the statement of claim had worked continuously and that their services had been regularized as per the seniority and on completion of 240 days in requisite years. The petitioner was engaged at Makriri Section under Sub Division No.II, HPPWD Joginder Nagar. Hence, it was prayed that the petition be dismissed.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 31.8.2015:—

1. Whether time to time termination of services of the petitioner by the respondent during the year June, 2000 to 31-08-2007 is/was illegal and unjustified as alleged?

..OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?

..OPP.

3. Whether the claim petition is not maintainable in the present form as alleged? . . OPR.

4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? .. *OPR.*

5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged? ..*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative/ counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Discussed
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief	: Petition is partly allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 days were issued to him.

11. In this regard Shri Soni Kumar (petitioner) stepped into the witness box as PW1. He in his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged him since June, 2000 on muster rolls, but they were issued only for 15 days. The said process continued till 31.8.2007.

12. Conversely, Shri B.M. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record the mandays chart of the petitioner as Ex.RW1/B, copy of year-wise mandays as Ex.RW1/C, copy of office order as Ex.RW1/D, copy of notification as Ex.RW1/E, copy of mandays chart of ten workmen as Ex.RW1/F and copy of judgment as

Ex.RW1/G. In his cross-examination, he admitted that as per Ex.RW1/F the workmen shown at serial nos. 1,2,4,5, 8 and 9 are junior to the petitioner and that they have been regularized. He further admitted that the said workmen had not been given fictional breaks. Further, he admitted that the nature of job of these workmen was similar to that of the petitioner. Volunteered that the sites might be different.

13. There is no denial of the fact that Reference No.110/2006 titled as The General Secretary, Himshakati PWD Karamchari Sangh Jogindernagar, District Mandi, H.P. vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P was decided by this Court/Tribunal on 2.11.2010. While deciding the said reference, it was held by this Court/Tribunal that the workmen therein were in continuous service with the respondent from their respective dates of engagement and the breaks which were given to them by the respondent being fictional in nature shall have no effect on their seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15-20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that the services of the petitioner were only being engaged for 10/15/20 days for want of work and funds. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex.RW1/F shows that workmen, namely, Shri Dalip Singh was engaged in July, 2002, Shri Gautam Ram in November, 2002, Shri Pradeep Kumar and Shri Kishori Lal in January, 2004, Shri Nihal Chand in October, 2003 and Shri Anil Kumar in February, 2003. Their names figure at serial nos. 1,2,4,5,8 and 9 in Ex.RW1/F. A perusal of Ex.RW1/F shows that all the aforementioned workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has admitted that all the above-named workmen, who were junior to the petitioner, were not given any breaks. He was also categorical that the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire months w.e.f. June, 2000 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire months is in correct. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. He continued working uninterruptedly but only for 15 to 20 days in a month right from his inception till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving him of the status and privileges of a permanent workman, entitling him to regularization as per the policy of the State Government. It is an act of gross discrimination which is *ex facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness, authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the

entire month to the petitioner was not due to any fault of his. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman i.e. petitioner was in 'continuous service'. He continued serving uninterruptedly with the respondent from the date of his engagement. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 15-20 days every month till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement. The breaks given to him by the respondent were fictional in nature and they shall have no effect on his seniority and continuity in service. His seniority shall be reckoned from his initial date of engagement.

17. Both the issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3:

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4:

19. No arguments were addressed on this issue nor it was pressed for at the time of arguments by the learned Assistant District Attorney for the respondent. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is bad for non-joinder of necessary parties. Then, Shri B.M. Thakur (RW1) while under cross-examination was categorical that B&R and National Highway, both are wings of the same department, i.e. Himachal Pradesh Public Works Department. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 5:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief:

22. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. It is held that the petitioner was in continuous uninterrupted

service with the respondent from the date of his engagement. The breaks given by the respondent to the petitioner from the month June, 2000 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, *except back wages*. His seniority shall be reckoned from his initial date of engagement. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 354/2014
Date of Institution	: 16-12-2014
Date of Decision	: 12-12-2019

Smt. Geeta Devi w/o Shri Rattan Chand, r/o VPO Karsal, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. S.K. Lakha, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Smt. Geeta Devi, w/o Shri Rattan Chand, r/o V.P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. during January 2000 to 21-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. The case of the petitioner as set out in the statement of claim is that her services were engaged by the respondent in National Highway Division, Joginder Nagar as a daily rated beldar *w.e.f.* 6.11.1999. Later on the workmen of the Division including the petitioner were absorbed in the newly created HPPWD Division, Joginder Nagar in January, 2004. The respondent had given fictional breaks to the petitioner from time to time from the date of her initial engagement upto 31.8.2007. The muster rolls were issued to the petitioner only for 15 days in a month. Some of the juniors, namely, S/Sh./Smt. Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal were allowed to complete 240 days in each calendar year. Some of them have been regularized by the department. The respondent had only stopped giving her fictional breaks from 1.9.2007. Since then she has completed 240 days in each calendar year and is still working with the respondent/department. The act of the respondent was wrong, illegal and against the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). During the period from 6.11.1999 to 31.8.2007, the petitioner had requested the respondent not to give her fictional breaks, but without success. A demand notice was then raised by her before the Labour department. She, thus, prays that she be given the benefits of seniority for the period of fictional breaks along-with back wages and be regularized with other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in February, 2000. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent's office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto 31.8.2007. Rather, the services of the petitioner were engaged as per the availability of work and funds, on her request from time to time. She had been informed at the time of her engagement that she had been engaged for 10/15/20 days and the office of the respondent was not in a position to provide her work for the whole month. The workmen whose names have been mentioned by the petitioner in the statement of claim had worked continuously and that their services had been regularized as per the seniority and on completion of 240 days in requisite years. The petitioner was engaged at Makriri Section under Sub Division No.II, HPPWD Joginder Nagar. Hence, it was prayed that the petition be dismissed.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 16.5.2015:—

1. Whether time to time termination of services of the petitioner by the respondent during the year January, 2000 to 31-08-2007 is/was illegal and unjustified as alleged? ..*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR*.

4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? ..OPR.

5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged? ..OPR.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative/ counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is partly allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 days were issued to her.

11. In this regard Smt. Geeta Devi (petitioner) stepped into the witness box as PW1. She in her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged her since January, 2000 on muster rolls, but they were issued only for 15 days. The said process continued till 31.8.2007.

12. Conversely, Shri B.M. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record the mandays chart of the petitioner as Ex.RW1/B, copy of year-wise mandays as Ex.RW1/C, year-wise working days as Ex.RW1/D, copy of office order as Ex.RW1/E, copy of notification as Ex.RW1/F and mandays chart of ten workmen as Ex.RW1/G.

In his cross-examination, he admitted that as per Ex.RW1/G the workmen shown at serial nos. 1,2,3,5 and 8 are junior to the petitioner and that they have been regularized. He further admitted that the said workmen had not been given fictional breaks. Further, he admitted that the nature of job of these workmen was similar to that of the petitioner. Volunteered that the sites might be different.

13. There is no denial of the fact that Reference No.110/2006 titled as The General Secretary, Himshakati PWD Karamchari Sangh Jogindernagar, District Mandi, H.P. vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P was decided by this Court/Tribunal on 2.11.2010. While deciding the said reference, it was held by this Court/Tribunal that the workmen therein were in continuous service with the respondent from their respective dates of engagement and the breaks which were given to them by the respondent being fictional in nature shall have no effect on their seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15-20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that the services of the petitioner were only being engaged for 10/15/20 days for want of work and funds. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex.RW1/G shows that workmen, namely, Shri Dalip Singh was engaged in July, 2002, Shri Gautam Ram in November, 2002, Shri Pradeep Kumar and Shri Kishori Lal in January, 2004, Shri Nihal Chand in October, 2003 and Shri Anil Kumar in February, 2003. Their names figure at serial nos. 1,2,4,5,8 and 9 in Ex.RW1/G. A perusal of Ex.RW1/G shows that all the aforementioned workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has admitted that all the above-named workmen, who were junior to the petitioner, were not given any breaks. He was also categorical that the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire months w.e.f. February, 2000 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire months is in correct. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. She continued working uninterruptedly but only for 15 to 20 days in a month right from her inception till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving her of the status and privileges of a permanent workman, entitling her to regularization as per the policy of the State Government. It is an act of gross discrimination which is *ex facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the

part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of her's. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman i.e. petitioner was in 'continuous service'. She continued serving uninterruptedly with the respondent from the date of her engagement. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging her after 15-20 days every month till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement. The breaks given to her by the respondent were fictional in nature and they shall have no effect on her seniority and continuity in service. Her seniority shall be reckoned from her initial date of engagement.

17. Both the issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3:

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4:

19. No arguments were addressed on this issue nor it was pressed for at the time of arguments by the learned Assistant District Attorney for the respondent. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is bad for non-joinder of necessary parties. Then, Shri B.M. Thakur (RW1) while under cross-examination was categorical that B&R and National Highway, both are wings of the same department, i.e. Himachal Pradesh Public Works Department. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 5:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief:

22. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her engagement. The breaks given by the respondent to the petitioner from the month February, 2000 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, *except back wages*. Her seniority shall be reckoned from her initial date of engagement. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant	: Sh. Daulat Ram s/o Shri Udham Singh, r/o Village Rajwal, P.O. Talwara, Tehsil Mukerian, District Hoshiarpur, Punjab.
Respondent	: Managing Director, M/S Horizon Polymers, Plot No. 192 to 195, 212 to 219, Phase-III, Industrial Area, Sansarpur Terrace, Distt. Kangra, H.P.

Number of proceedings of
the Labour Court-cum-
Industrial Tribunal, Dharamshala : 72/2018

Present:-

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. Amit Mandyal

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statement of applicant Shri Daulat Ram recorded on 09.12.2019 and which is placed on record, the reference is withdrawn as compromised.

The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Applicant : Sh. R.K. Singh Parmar, AR
Respondent : Sh. Sanjeev Gupta, Adv. vice

Judicial Officer
Date:14.12.2019

Member

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 605/2015
Date of Institution : 19-12-2015
Date of Decision : 20-12-2019

Shri Prem Singh s/o Shri Devi Chand, r/o Village Suhila, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangri, District Chamba,
H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Prem Singh s/o Shri Devi Chand, r/o Village Suhila, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangri, District Chamba, H.P. *vide* demand notice dated 10.12.2011 regarding his alleged illegal termination of services September, 2003 suffers from delay and laches? If not, Whether termination of the services of Shri Prem Singh s/o Shri

Devi Chand, r/o Village Suhila, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer Killar Division, H.P.P.W.D. Killar Tehsil Pangi, District Chamba, H.P. during September, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar *w.e.f.* April, 2001 by the respondent. He continuously worked without breaks upto October, 2004 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him, namely, Shri Amro and Shri Chatro have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2000 and he had worked as such till the year 2003. During this period he had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 10.12.2011 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23.5.2018:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 10-12-2011 qua his termination of service during Sept., 2003 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

2. Whether termination of the services of petitioner by the respondent during Sept., 2003 is/was illegal and unjustified as alleged? ..*OPP.*

3. If issue no.1 or issue no.2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: Affirmative
Relief.	: Petition is dismissed as per the operative part of the award.

REASONS FOR FINDINGS

Issue No.1:

9. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issues No. 2 and 3:

11. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

12. The petitioner, namely, Shri Prem Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the department from June, 2000 to August, 2003. Volunteered that, he had worked upto October, 2004. He specifically denied that after August, 2003, he had not worked in the department. He further denied that he had left the job after August, 2003. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2001 and that he was orally terminated in the year 2004. He admitted that the petitioner had neither been charge-sheeted, nor he had been recalled to work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of June, 2000 by the respondent and that he had worked as such intermittently upto August, 2003.

17. Now the point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

18. It is well known that abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now comes the question as to whether in the month of September, 2003, the services of the petitioner were finally terminated by the respondent or not?

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during September, 2003. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in the month of October, 2004. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had finally been terminated by the respondent in the month of October, 2004. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being

beyond the terms of the reference. Then, as per the mandays chart Ex.RW1/B, which is not in dispute, the petitioner is shown to have worked for a period of 31 days in the month of August, 2003. Thereafter, he is shown to have not worked even for a single day for the period from September, 2003 upto December, 2004. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of September, 2003, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. For the discussion and findings arrived at by me above, the allegations of the petitioner that the principle of 'last come first go' had not been adhered to and that new/fresh hands had also been appointed and further that he had not been given an opportunity of re-engagement by the respondent after his termination pale into insignificance.

22. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4:

23. Taking in to account my findings on issues no. 2 and 3 above, it is held that the claim petition is not maintainable in the present form. This issue is decided in favour of the respondent and against the petitioner.

Relief:

24. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 487/2015
Date of Institution	: 09-11-2015
Date of Decision	: 20-12-2019

Shri Lobhi Ram s/o Shri Jai Singh, r/o Village Suiella, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar Pangi, District Chamba, H.P.

*..Respondent.***Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Dharam Malhotra, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Lobhi Ram s/o Shri Jai Singh, r/o Village Suiella, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 20-05-2011 regarding his alleged illegal termination of services during October, 2003 suffers from delay and latches? If not, Whether termination of services of Shri Lobhi Ram s/o Shri Jai Singh, r/o Village Suiella, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 2003, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar w.e.f. August, 2002 by the respondent. He continuously worked without breaks upto October, 2003 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2002 and he had worked as such till the year 2003. During this period he had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never

approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 20.5.2011 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 08.11.2016:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated 20-05-2011 *qua* his termination of service during October, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.

2. Whether termination of the services of petitioner by the respondent during October, 2003 is/was illegal and unjustified as alleged? ..*OPP*.

3. If issue no. 2 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Partly affirmative
Issue No.3	: Lump sum compensation of ` 25,000/-
Issue No.4	: Negative
Relief	: Petition is partly allowed awarding lump sum compensation of ` 25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Lobhi Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked in the department from August, 2002 to October, 2003. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He specifically denied that after October, 2003, he had left the work of his own will and had never reported back for duty. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2001 and that he was orally terminated in the year 2004. He admitted that the petitioner had neither been charge-sheeted, nor he had been recalled to work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 2002, by the respondent and that he had worked as such intermittently upto October, 2003.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2003. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 83 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon’ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:—

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

21. Ex. RW1/C i.e. the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals Smt. Ram Dei was appointed by the respondent in the year 2003, whereas the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has been given on Ex. RW1/C that Smt. Ram Dei was engaged as per the orders of the Court/Tribunal, but that would not defeat the claim of the petitioner that she was junior to him. A note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Shri B.K. Kapil (RW1) was categorical in his substantive evidence that both the above named workers were junior to the petitioner. Admittedly, both the above named persons and Smt. Ram Dei are still serving the respondent/department and their services were engaged after the engagement of the services of

the petitioner, which as per Ex.RW1/B took place on August, 2002. Shri B.K. Kapil (RW1) clearly admitted in his cross-examination that all the junior workers who had continuously worked, have been regularized. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. It is also not made out from the record that the petitioner was junior to Smt. Ram Dei. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.**

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

25. Faced with the situation, the learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held: "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone*".

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(EB) 580 (majority view)** will also be advantageous on this aspect of the matter.

27. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant

factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wage or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wage has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 167 days as a non-skilled worker. His services, as per the reference were disengaged in October, 2003 and he had raised the industrial dispute by issuance of demand notice after about **eight years i.e.** demand notice was given on 20.5.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues no. 2 and 3 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issues no.1 and 4 are answered in the negative and decided against the respondent.

Relief :

29. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2019.

Sd/-
(Yogesh Jaswal),
Presiding Judge,
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:104/2019
Date of Institution	:19-10-2019
Date of Decision	:20-12-2019

Shri Baldev Singh s/o Shri Durga Dass, r/o V.P.O. Ghaloon via Jalari, Tehsil Nadaun, District Hamirpur, H.P. ..Petitioner.

Versus

The Employer/General Manager, M/s Punj Motors Private Limited, NH 88, Tikkar Didwin, Tehsil & District Hamirpur, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Petitioner in person
For the Respondent	: Sh. Neeraj Pathania, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Baldev Singh s/o Shri Durga Dass, r/o V.P.O. Ghaloon via Jalari, Tehsil Nadaun, District Hamirpur, H.P. *w.e.f.* 09-02-2017 by the Employer/General Manager, M/s Punj Motors Private Limited, N.H. 88, Tikkar Didwin, Tehsil & District Hamirpur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case is listed for appearance of the parties for today, but, however, the petitioner (Shri Baldev Singh) had made the below given statement in the Court:-

"C;ku fd;k fd eSa bl case dks vkxs ugha pykuk pkgrk gwa vkSj okfil ysrk gwaA"

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 451/2016
Date of Institution : 20.8.2016
Date of Decision : 21.12.2019

Shri Parkash Chand s/o Shri Mussadi, r/o Village Chanod, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Parkash Chand s/o Sh. Mussadi Village Chanod P.O. Tarella Tehsil Churah Distt. Chamba H.P. during 9/2005 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 199 days during the year 2001 to 2005 and has raised his industrial dispute vide demand notice dated 21/4/2015 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 10 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar w.e.f. August, 2001 by the respondent. He continuously worked without breaks upto November, 2004 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him, namely, Shri Gautam Singh, Shri Dev Raj and Shri Sham Lal have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2002 and he had worked as such till the year 2004. During this period he had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 21.4.2015 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 18.6.2018:—

1. Whether termination of the services of the petitioner by the respondent during September, 2005 is/was legal and justified as alleged? ..*OPP.*

2. If issue no. 1 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? .. *OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Negative
Issue No.3	: Affirmative
Issue No.4	: Negative
Relief	: Petition is dismissed as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Parkash Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the department from July, 2002 to May, 2004. Volunteered that, he had worked from August, 2001 upto October, 2004. He denied that after August, 2001 to June, 2002 and from October 2002 upto May, 2004, he had never worked in the department. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He specifically denied that after May, 2004, he had left the work of his own sweet will and had never reported back for duty. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2001 and that he was orally terminated in the year 2004. He admitted that the petitioner had neither been charge-sheeted, nor had been recalled on work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 2002 by the respondent and that he had worked as such intermittently upto May, 2004.

15. Now the point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

16. It is well known that abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now comes the question as to whether in the month of September, 2005, the services of the petitioner were finally terminated by the respondent or not?

18. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during September, 2005. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent on 1st November, 2004. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had finally been terminated by the respondent on 1st November, 2004. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Then, as per the mandays chart Ex.RW1/B the petitioner is shown to have worked for a period of 20 days in the month of May, 2004. Thereafter, he is shown to have not worked even for a single day for the period from June, 2004 upto December, 2004. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of September, 2005, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

19. For the discussion and findings arrived at by me above, the allegations of the petitioner that the principle of 'last come first go' had not been adhered to and that new/fresh hands had also been appointed and further that he had not been given an opportunity of re-engagement by the respondent after his termination pale into insignificance.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No.3:

21. Taking in to account my findings on issues no. 1 and 2 above, it is held that the claim petition is not maintainable in the present form. This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

22. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

23. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

24. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 538/2016
Date of Institution : 23-8-2016
Date of Decision : 21-12-2019

Shri Beli Ram s/o Shri Purshotam, r/o Village Banegi, P.O. Tarella, Tehsil Churah,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Beli Ram s/o Sh. Purshotam Village Banegi P.O. Tarella Tehsil Churah Distt. Chamba, H.P. during 9/2003 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 195 days during the years 5/2002 to 9/2003 and has raised his industrial dispute vide demand notice dated 29-4-2015 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar w.e.f. May, 2002 by the respondent. He continuously worked without breaks upto September, 2003 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2002 and he had worked as such till the year 2003. During this period he had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 29.4.2015 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:—

1. Whether termination of the services of the petitioner by the respondent during Sept., 2003 is/was legal and justified as alleged? ..OPP.

2. If issue no. 1 is proved in affirmative, to what service benefits petitioner is entitled to? ..OPP.

3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: Lump sum compensation of `12,000/-
Issue No.3	: Negative
Issue No.4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of `12,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Beli Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the department from August, 2003 to September, 2003. Volunteered that, he had worked from May, 2002 upto September, 2003. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He specifically denied that after September, 2003, he had left the work of his own sweet will and had never reported back for duty. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing

agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2002 and that he was orally terminated in the year 2003. He admitted that the petitioner had neither been charge-sheeted, nor he had been recalled to work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner, are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 2003 by the respondent and that he had worked as such upto September, 2003.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the

number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of September, 2003. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had worked for 58 days only in two months in the year 2003 with the department. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

21. Ex. RW1/C i.e. the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Shri B.K. Kapil (RW1) was categorical in his substantive evidence that both the above named workers were junior to the petitioner. Admittedly, both the above named persons are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner, which as per Ex.RW1/B took place in August, 2003. Shri B.K. Kapil (RW1) clearly admitted in his cross-examination that all the junior workers who had continuously worked, have been regularized. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this

view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.**

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner.

Issues No. 3 and 4:

25. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

26. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

27. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

28. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely

reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 58 days as a non-skilled worker. His services, as per the reference were disengaged in September, 2003 and he had raised the industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given on 29.4.2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `12,000/- (Rupees twelve thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues no.3 and 4 are answered in the negative and decided against the respondent.

Relief:

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `12,000/- (Rupees twelve thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of December, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

CHANGE OF NAME

I, Ravinder Kumar Gandhi s/o Hukmi Narain Gandhi, r/o Anshuman near degree College Rajgarh Road Solan, H.P. declare that I have changed my name from Ravinder Gandhi to Ravinder Kumar Gandhi, Concerned note.

RAVINDER KUMAR GANDHI
*s/o Hukmi Narain Gandhi, r/o Anshuman near degree College,
Rajgarh Road Solan, District Solan, (H.P.)*

CHANGE OF NAME

I, Kaushlya Rani w/o Hukmi Narain Gandhi, r/o Anshuman near degree College Rajgarh Road Solan, H.P. declare that I have changed my name from Kaushalya Rani Gandhi to Kaushlya Rani, Concerned note.

KAUSHLYA RANI ,
*w/o Hukmi Narain Gandhi, r/o Anshuman near degree College,
Rajgarh Road Solan, District Solan, (H.P.)*

CHANGE OF NAME

I, Hukmi Narain Gandhi, s/o Himat Ram Gandhi, r/o Anshuman near degree College Rajgarh Road Solan, H.P. declare that I have changed my name from H.N. Gandhi to Hukmi Narain Gandhi, Concerned note.

HUKMI NARAIN GANDHI,
*s/o Himat Ram Gandhi, r/o Anshuman near degree College,
Rajgarh Road Solan, District Solan, (H.P.)*